

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

- - - -

MARK GARNETT,)

Plaintiff,)

-V-

) CASE NO. 5:19CV02864
) JUDGE JOHN R. ADAMS

AKRON CITY SCHOOL DISTRICT BOARD)
OF EDUCATION, ET AL.,
Defendants.)

- - - -

The video teleconference deposition of MARK GARNETT, the Plaintiff herein, being called by the Defendants as if upon cross-examination under the statute, and taken before Megan A. Medved, a Notary Public within and for the State of Ohio, pursuant to the agreement of counsel, on Thursday, September 3rd, 2020, at 9:30 a.m., at the Offices of Tackla Court Reporting, LLC, 1020 Ohio Savings Plaza, 1801 East 9th Street, City of Cleveland, County of Cuyahoga, and the State of Ohio.

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MARK GARNETT, of lawful age, the Plaintiff
herein, having been first duly sworn, as hereinafter
certified, deposes and says as follows:

- - - -

CROSS-EXAMINATION OF MARK GARNETT

BY MR. McLANDRICH:

Q. Good morning, Mr. Garnett.

A. Good morning.

Q. As you probably know, I'm John McLandrich. I represents the Defendants in the lawsuit that you've filed and so today I'm going to ask you questions about the lawsuit. If there's anything that I ask you that you don't understand, please let me know before you answer the question. Otherwise if you answer I'll assume that you understood the question. Okay?

A. Okay.

Q. All right. And if at any time the link breaks down or you can't hear me, please let us know. Wave your hands or something so that we can make sure that we can get our communication going back on again. All right?

A. Okay.

Q. All right. And so I know you sat through the

1 other depositions that were done by phone and the same
2 sort of thing here where we have to be careful to not
3 talk over each other to help the court reporter. So
4 I'll not talk over you and if you could let me get the
5 entire question out before you answer, even though you
6 might think you know what the full question will be,
7 that will help her as well. Obviously, just answer
8 verbally as opposed to shrugging your shoulders or
9 nodding or shaking your head, that sort of thing will
10 help the court reporter as well. Okay?

11 A. Okay.

12 Q. I know from reviewing the recordings that you
13 have some problem with your eyesight, and I know that
14 you're going to be trying to bring up the documents on
15 your tablet, so if you have any problems seeing the
16 documents or bringing them up, please let us know that
17 as well. Do you also have a laptop that you could bring
18 the documents up on that might be a bigger screen and
19 would be easier for you to read?

20 A. No.

21 Q. All right. Well, then let's just get started
22 and we'll do the best that we can. Also if you need a
23 break at any time to use the restroom or anything, just
24 let me know. If there's a question pending I'd like you
25 to just answer the question before you take a break, but

1 otherwise if you need breaks we'll take some because
2 this is not a marathon and is not meant to make you
3 uncomfortable in any way. All right?

4 A. Okay.

5 Q. Thank you. Would you just start with your full
6 name and address for the record?

7 A. Mark Garnett, 1358 Hardesty Boulevard.

8 Q. And how old are you now, Mr. Garnett?

9 A. I'm 59.

10 Q. And so in looking through the records it seems
11 as if you've got some significant health conditions that
12 are continuing and looking through the records I saw an
13 indication that you now need a kidney transplant. Is
14 that right?

15 A. Yes.

16 Q. When was it determined that you need a kidney
17 transplant?

18 A. That was in January of 2019.

19 Q. Are you scheduled for that?

20 A. Yes.

21 Q. Are they still looking to find a kidney?

22 A. Yes.

23 Q. And if at any time I'm not talking loud enough
24 for you to hear me, please let me know.

25 A. Okay.

1 Q. And as I understand it you're doing dialysis?

2 A. Yes. Three times a week.

3 Q. What other types of treatments are you receiving
4 at this point? What kind of treatments and for what
5 conditions are you receiving treatment?

6 A. You mean like medication?

7 Q. Well, not just medication. We'll talk about
8 that, but are you seeing any therapists or doctors on a
9 regular basis?

10 A. Yes. I see two therapists on a regular basis.

11 Q. Who are you seeing and what for?

12 A. I see Tomoko. She's at Portage Path Behavioral
13 Health.

14 Q. How do you spell that name, do you know?

15 A. No, I don't.

16 Q. Okay. How often do you see -- is it a her?

17 A. Yes. I see her every two weeks.

18 Q. Is that just talk therapy?

19 A. Yes. At this time, yes.

20 Q. And how long are those sessions each two weeks?

21 A. An hour.

22 Q. When was the last time that you saw her?

23 A. This Tuesday. This past Tuesday.

24 Q. And who is the other therapist that you see?

25 A. I'd have to ask my wife her name. I just

1 started seeing her maybe a few months ago. She's also
2 like a psychiatrist. Do you want me to get that name
3 real quick?

4 **Q. Yes, please.**

5 A. Okay. Hold on one second. Dr. Azoury, and
6 that's Akron General.

7 **Q. And what do you see her for?**

8 A. For dealing with the hangman noose situation,
9 the PTSD. And I've been seeing her for trying to sleep
10 also.

11 **Q. Is that just talk therapy or does she prescribe**
12 **you medication?**

13 A. She had prescribed some medication but there
14 were some things that -- I was just recently in the
15 hospital, that The Cleveland Clinic wanted me to stop.
16 I'm trying to think of that medication. There's
17 medication that I was taking but they wanted me to stop
18 at the beginning of August when I had a visit in the
19 hospital. They were thinking it was making me have
20 seizures. I can tell that you medication, if you'd
21 like.

22 **Q. Please.**

23 A. Let me find it. Hold on one second.
24 Escitalopram.

25 **Q. Can you spell it?**

1 A. I just happen to remember the name of it.

2 E-S-C-I-T-A-L-O-P-R-A-M.

3 **Q. Give me that one more time, if you could.**

4 A. E-S-C-I-T-A-L-O-P-R-A-M.

5 **Q. Okay. Thank you. And is that a psychiatric**
6 **medication?**

7 A. Yes. And there's another one that I take,
8 Trazodone. I'm looking for that because I can't spell
9 that one either. But it's Trazodone.

10 **Q. Okay. Is that to help you sleep?**

11 A. Yes. That's to help me relax and there's
12 another one that I take -- I can get that. Hold on.
13 Prazosin. P-R-A-Z-O-S-I-N. That's for nightmares.

14 **Q. The Prazosin, or however you say that, how often**
15 **do you take that?**

16 A. Every night.

17 **Q. And how about the Trazodone?**

18 A. Trazodone I should be taking it every night but
19 just recently I've been taking off some of those things
20 because, like I said, in the hospital they thought it
21 was causing seizures.

22 **Q. Which ones did they take you off?**

23 A. The Escitalopram.

24 **Q. Did they take you off any others?**

25 A. Trazodone is something that's in discussion

1 right now because that doesn't really seem to work.
2 That was supposed to help me sleep but I haven't been
3 sleeping, so I'm in discussion with the therapist now as
4 far as whether or not I'm going continue that.

5 **Q. When was the last time that you saw Dr. Azoury?**

6 A. Since the pandemic. It might have been two
7 months since I've seen her. I'm not really sure but as
8 far as just going off my memory, I think it might have
9 been two months ago.

10 **Q. Do you know how to spell her last name?**

11 A. No, I don't.

12 **Q. Okay. She's through Akron General, though?**

13 A. Yes. Wellness Center I think.

14 **Q. Do you have any appointments set up with her?**

15 A. Yes. I'm pretty sure that I do. I think my
16 next appointment I might be going in actually to see her
17 but we did on the phone about two months ago.

18 **Q. Any other physicians or therapists that you're**
19 **currently treating with?**

20 A. There's my primary care doctor, Dr. Amanabu.

21 **Q. I presume you won't be able to spell that one.**

22 A. I might be able to take a shot at it.

23 A-M-A-N-A-B-U. If that's not it, it's close.

24 **Q. Okay. And is he on his own, or Akron General,**
25 **or where is he?**

1 A. He's on his own.

2 **Q. How often are you consulting with him?**

3 A. Right now maybe once every couple of months. I
4 think I'll be seeing him at the end of this month.

5 **Q. And what conditions is he monitoring you or**
6 **helping you with?**

7 A. He's primary care. Just like blood pressure.
8 He's helping with blood pressure and just questions and
9 maybe if I had to go see a physician he could recommend
10 that.

11 **Q. Okay. Anyone else that we haven't discussed**
12 **that you're seeing on a reoccurring basis?**

13 A. There probably is, I just can't remember off the
14 top of my head.

15 **Q. Sure. If you think of somebody else while we're**
16 **talking about other things, just interrupt and let me**
17 **know. All right?**

18 A. Okay.

19 **Q. So at this point I assume that you're not**
20 **working at all. Are you working at all?**

21 A. No. I'm not working. No.

22 **Q. And the last place that you worked was when you**
23 **were working for The Akron Public Schools, right?**

24 A. Yes.

25 **Q. Do you recall what your last day of active work**

1 **was?**

2 A. Are you meaning --

3 **Q. When you were actually at the school performing**
4 **custodial duties.**

5 A. No, I don't.

6 **Q. Fair to say that you were off on leave for a**
7 **substantial time before you received your disability**
8 **retirement?**

9 A. Yes. That's fair.

10 **Q. Do you know whether you're considered to still**
11 **be on medical leave?**

12 A. Am I still considered to be on medical leave?

13 **Q. Yes. When you're on this disability benefit, do**
14 **you know whether you're technically still considered to**
15 **be on medical leave as opposed to being a terminated**
16 **employee?**

17 A. I don't understand the question.

18 **Q. Sure. So somebody can be completely terminated**
19 **from their employer. In other words, where they have no**
20 **ongoing relationship with their employer. You**
21 **understand that, right?**

22 MR. GILBERT: Objection.

23 A. Yes.

24 BY MR. McLANDRICH:

25 **Q. And then before when you were on medical leave**

1 **you were not physically working but you were still on**
2 **the payroll at Akron Public Schools. Do you remember**
3 **that?**

4 A. FMLA.

5 **Q. Yeah. Right.**

6 A. Okay.

7 **Q. On FMLA. Do you recall that?**

8 A. Yes.

9 **Q. All right. And so now you applied for and**
10 **received a disability benefit through SERS, correct?**

11 A. Yes.

12 **Q. And do you know whether the school carries you**
13 **as being on a disability leave when you're receiving**
14 **that SERS disability benefit?**

15 MR. GILBERT: Objection. You can
16 answer if you know.

17 A. I don't know.

18 BY MR. McLANDRICH:

19 **Q. In terms of your employment with Akron Public**
20 **Schools, what position did you start off in, do you**
21 **recall?**

22 A. Yeah. I started off as eight-hour custodial
23 worker.

24 **Q. Were you like a five-hour or anything before you**
25 **became an eight-hour?**

1 A. No.

2 **Q. Do you recall when you started as eight-hour?**

3 A. About March of 2002.

4 **Q. Did you receive a promotion at some point?**

5 A. Yes.

6 **Q. And what was your first promotion?**

7 A. First promotion was probably assistant
8 custodian.

9 **Q. Do you recall roughly when you became an**
10 **assistant custodian?**

11 A. I'm thinking 2014. Somewhere around there.

12 **Q. Did you have to take a civil service exam for**
13 **that?**

14 A. Yes.

15 **Q. And eventually you were promoted again?**

16 A. Yes. To head custodian.

17 **Q. And what year was that, if you recall?**

18 A. 2016.

19 **Q. Is that an proximate date?**

20 A. Yeah. About 2016.

21 **Q. Okay. And, again, you took a civil service exam**
22 **to become head custodian?**

23 A. Yes. That I recall.

24 **Q. Okay. And then based on how you performed on**
25 **those exams you were selected to become the head**

1 **custodian?**

2 A. I don't know how that worked. I took the exam
3 and ended up getting the position.

4 **Q. All right. And what building were you at when**
5 **you were assistant custodian?**

6 A. I was at Crouse.

7 **Q. And then when you became head you stayed at**
8 **Crouse?**

9 A. Actually, they made me stay at Crouse. I was
10 made to stay at Crouse.

11 **Q. How did they make you stay at Crouse?**

12 A. When a position opens up and a building a free,
13 then you go to that building. Say Innes was open, then
14 I would go to the next building in line. There's
15 buildings in line that custodians can go to. Crouse was
16 not the next building in line. There was another school
17 but instead of offering me the next school that was in
18 line, they told me to stay at Crouse. That's how I
19 ended up being the assistant and head custodian at
20 Crouse.

21 **Q. What was this next building in line? What was**
22 **that?**

23 A. I can't remember that, but there was another
24 building before Crouse.

25 **Q. So as an assistant custodian, or an eight-hour**

1 **custodian, and certainly as head custodian you'd been a**
2 **member of a union, correct?**

3 A. Yes.

4 **Q. And the union contract controls the bidding with**
5 **respect to moving from building to building, correct?**

6 MR. GILBERT: Objection. You can go
7 ahead and answer if you know.

8 A. I'm not sure.

9 BY MR. McLANDRICH:

10 **Q. Okay. So you don't know whether there's a**
11 **process in the union contract for when a building or a**
12 **position becomes vacant whether there's a process to bid**
13 **for that particular opening?**

14 A. I'm not sure about that. Are you speaking on
15 why I stayed at Crouse?

16 **Q. That's certainly one reason, yes.**

17 A. As I said earlier, you don't bid on a building
18 when you become the head custodian. You take the next
19 building in line. The bidding process to my
20 understanding is something different, like a bid sheet,
21 but you don't get a bid sheet when you first become a
22 head custodian. When you first become a head custodian,
23 the next building in line that needs a custodian you're
24 assigned that building or offered that building. I
25 wasn't offered the building at all. I was just told to

1 stay at Crouse. That's something totally different that
2 we're talking about.

3 **Q. Who did you have this conversation with that**
4 **told you that you couldn't have the next building?**

5 A. That was Mike Critchfield.

6 **Q. What was his position?**

7 A. Mike Critchfield may have been the custodial
8 coordinator at the time. Wait a minute. Let me see.
9 It was a long time ago. It could have been either Mike
10 Critchfield or John Beverlin. I'm thinking Mike
11 Critchfield, but it could have been John Beverlin. I'm
12 thinking Mike Critchfield might have been retired at
13 that time so it could have been John Beverlin.

14 **Q. Did you ever bid to go to a different building**
15 **other than Crouse?**

16 A. No.

17 **Q. Okay. Do you know if there were ever other**
18 **openings that you could have bid on?**

19 A. Yes.

20 MR. GILBERT: At what point, counsel?

21 MR. McLANDRICH: As head custodian.

22 MR. GILBERT: You can go ahead and
23 answer if you know.

24 A. Jumping ahead a little bit, but when I got
25 downgraded in June of 2017 there was a lot of buildings

1 that were open to bid on but I couldn't bid on it
2 because of the downgrade that I had. Matt Frame told me
3 that I couldn't bid on any buildings after that
4 evaluation that I got in June of 2017.

5 BY MR. McLANDRICH:

6 **Q. All right. And did you receive any pay cut in**
7 **June of 2017?**

8 A. A pay cut?

9 **Q. Yes.**

10 A. No. Not that I remember.

11 **Q. Okay. In June of 2017 you were already off on**
12 **leave, correct?**

13 A. No.

14 **Q. This evaluation that you received was 2018, not**
15 **2017, right?**

16 A. 2018 was a -- they had to redo it. 2017, June
17 of 2017 is when I got downgraded.

18 **Q. And when you say that you got downgraded, this**
19 **is a performance evaluation that you received from Akron**
20 **Public Schools, correct?**

21 A. From Tara Bruce. Yes.

22 **Q. And when you say "downgraded," there were some**
23 **categories on the evaluation that you were marked below**
24 **satisfactory on. Is that what you're indicating?**

25 A. That's correct.

1 **Q. That's what you mean by downgraded, correct?**

2 A. Yes.

3 **Q. You weren't demoted from being the head**
4 **custodian, correct?**

5 A. No. It just denied me of opportunity.

6 **Q. And that opportunity you're contending was the**
7 **opportunity to bid on another building?**

8 A. Correct.

9 **Q. All right. Prior to receiving that evaluation**
10 **in June of 2017 had you ever bid on another building?**

11 A. No.

12 **Q. Had you had opportunities to bid on another**
13 **building prior to that time?**

14 A. Yes.

15 **Q. Sounds like you and Ms. Bruce didn't**
16 **particularly get along.**

17 A. She didn't care for me. There was times, and I
18 explained that to Todd Wammes, this was a Dr. Jekyll and
19 Mr. Hyde thing. One minute she was one way and the next
20 minute she was another way. If she walked out the door
21 she was nice and when she walked back in the door she
22 wasn't, and I explained that to Todd Wammes.

23 **Q. And this was your perception of the way that she**
24 **acted toward you, right?**

25 A. Yes. Nice one minute and totally different the

1 next.

2 **Q. And what's your understanding of why she was**
3 **like that?**

4 A. Well, there were times where I felt she was
5 coming on to me, like she wanted to date me, and when I
6 wasn't accepting to the things that she was doing then
7 sometimes she was mean.

8 **Q. Did she ever ask you out on a date?**

9 A. She didn't come out and ask me out but there
10 were different things that were going on where she made
11 me feel comfortable, like if I was that kind of person
12 that she would go out with me.

13 **Q. What did she do or say that led you to believe**
14 **that?**

15 A. She would often call me in her office.
16 Sometimes when she called me in her office for small
17 talk she would have on like an halter top, and her
18 breasts would be hanging out. I wouldn't look. I'd sit
19 down in a chair. She was always back in the boiler room
20 and there were times where she would call me on the
21 radio to come into a room, and this would be after
22 hours, and when I would go into the room -- she told me
23 she would need me there. The next thing I know I'm
24 coming into the room on several where she's bent over,
25 and half her butt is showing and she's got thongs

1 hanging out.

2 There were other times -- we have a room in the
3 building where there's very low traffic, room 104. In
4 room 104 there were two small bathrooms, five-by-five,
5 five-by-six. And in one of the bathrooms there's like a
6 bed or like a changing table and we had a couple of
7 conversations where she had pulled me and we had a
8 conversations in there. I remember one-time we kept
9 going in there and I was uncomfortable so I would go --
10 the second time she took me back in that room I stood
11 one foot in the bathroom door, and one foot on the
12 carpet keeping that bathroom door open.

13 There were other times -- she knew I lived right
14 around the corner. I was walking home one day and she
15 ended up following me, pulled over the curb and said,
16 look Mr. Garnett, you know, I could have gave you a ride
17 and said that seductively. She followed me around the
18 building. She followed me around the building, I got on
19 the elevator, she got on the elevator with me, she
20 leaned back with one leg up against the wall as in a
21 submissive position, and after I got off the elevator I
22 was walking through the second floor and walked back
23 down the stairs, she followed me down the stairs. I go
24 back to the boiler room -- I think she got distracted
25 for a minute and so I go back to the boiler room and in

1 the boiler room we have a side door that leads to an
2 outside chiller area. It's like a brick wall. There's
3 no ceiling on that, but it's where our chiller and
4 garage door is. So since she was distracted -- nobody
5 knows about that door. You'd really have to look for
6 it.

7 I went outside in that chiller area said, okay,
8 I got away from her. The next thing I know I see the
9 door opening up. So she came out to the chiller area,
10 and again leaned up against the wall the same way she
11 did in the elevator, in the submissive position with her
12 hands behind in back and one foot up on the wall. I may
13 have missed some things. But these are the kind of
14 things that were going on in the building that made me
15 feel uncomfortable.

16 **Q. Did she ever ask you for sex?**

17 A. No.

18 **Q. And we already discussed she never asked you**
19 **out?**

20 A. Not with words, but her actions did.

21 **Q. Did she ever touch you in an inappropriate**
22 **fashion?**

23 A. No. She's gotten close, though.

24 **Q. She's gotten close to you. Is that what you're**
25 **saying?**

1 A. Yes. Those are the times in the small bathroom.

2 **Q. The conversation in the small bathroom, was it**
3 **about the status of the bathroom?**

4 A. Actually it seemed like it started off like
5 that, but after that it changed to where we're talking
6 about things that we could have talked about in the
7 cafeteria.

8 **Q. And were these issues about other items in the**
9 **building? In other words, other conditions of the**
10 **building?**

11 A. No. It was actually about a pool worker.

12 **Q. But it was something to do with your employment?**

13 A. It was a conversation that didn't have to take
14 place in the bathroom.

15 **Q. I understand that, but my question is it had**
16 **something to do with the operation of the Crouse**
17 **Elementary School?**

18 A. It was about a pool worker.

19 **Q. Okay. And the pool workers were working at**
20 **Crouse Elementary School, right?**

21 A. Yes.

22 **Q. And when she would call you in her office there**
23 **would be small talk, but there would be also talk about**
24 **the operation of Crouse Elementary School, your job, the**
25 **pool workers and the condition of the building, yes?**

1 A. Yes. There used to be a picture that was
2 hanging up on her door where she keeps her coat. She
3 wanted to make sure that I saw this picture of her that
4 somebody put together. I think she told me that kids
5 had put it together when we had a conversation about it.
6 Kids had put it together, but it was her head and a body
7 of a girl with a very short mini skirt, long stockings,
8 belly showing, that kind of thing.

9 **Q. Did you ever complain to anyone at Akron Public**
10 **Schools that you felt Ms. Bruce was propositioning you**
11 **or trying to date you or behaving in an inappropriate**
12 **fashion with respect to any sexual overtones?**

13 A. I tried, but there were some things that I
14 couldn't say because I figured if I would have said some
15 things they would have taken me right out of the
16 building.

17 **Q. What do you mean by you tried?**

18 A. I had a meeting with Todd Wammes and Steve
19 Santangelo. When I met with them I let them know that
20 she had given me a rose. I didn't tell them the reason
21 why she gave me a rose. I did give a reason, but I
22 didn't tell them what I thought, you know, the other
23 reason was.

24 **Q. All right. So what was the reason that -- I'm**
25 **sorry. Go ahead.**

1 A. I didn't tell them what the other reason was
2 because I felt -- I wanted to shine a light on the
3 situation where they would in their own minds, they
4 would be like, wait a minute, she gave Mr. Garnett a
5 rose, that's inappropriate. Just to shine a light on
6 some things. So that was my attempt to at least get the
7 ball rolling or to start where maybe some people would
8 say, okay, wait a minute. What's going on here?

9 **Q. Is that the sole attempt that you made?**

10 A. Yes.

11 **Q. What reason did you give them at that meeting?**

12 A. The reason I gave them in my meeting from my
13 best memory was I told them -- I think it was a
14 Saturday, I believe. I went into the building, worked
15 on my own time. I took about 38 tables out of the
16 cafeteria. I scrubbed that cafeteria, I waxed that
17 cafeteria. I waxed the first floor and I waxed the
18 second floor and I put all of that back together. She
19 came back and everything was shiny. So I told them that
20 she probably gave me that rose -- it had something to do
21 with that. But she never told me why she gave me the
22 rose. She gave me the rose, I just assumed -- gave her
23 the benefit of the doubt and thought maybe it's for me
24 cleaning up both hallways, waxing them and doing the
25 cafeteria. I believe that's the reason I told Todd

1 Wammes.

2 **Q. And from that you were hoping they would infer**
3 **there was something improper about her giving you the**
4 **rose?**

5 A. I knew it was improper, you know, but I would
6 hope they would see something from that, especially from
7 the other complaints that I was having.

8 **Q. What do you mean from the other complaints that**
9 **you were having?**

10 A. The complaints that Ms. Bruce -- I mean, I went
11 to Todd Wammes to explain to him about my past, why
12 things were happening in my building the way that they
13 were happening and the reasons for that.

14 **Q. And this conversation that you're talking about**
15 **with Todd Wammes and Steven Santangelo, that's one of**
16 **the recordings that you've produced to me through your**
17 **attorney?**

18 A. Yes.

19 **Q. All right. So are those recordings that you've**
20 **produced, are those all the recordings that you made?**

21 A. Yes.

22 **Q. So there's no recordings that you made that**
23 **weren't produced?**

24 A. No. That was it.

25 **Q. Do you have some information that would show**

1 when those various recordings were made? There were
2 only two of them that were dated. Is there some way for
3 us to know when these events that are recorded happened?

4 A. No. They were done on an old phone.

5 Q. When you say something like you mentioned before
6 that you were telling Todd Wammes about things that
7 happened to you and your history, I assume you're
8 talking about starting with this 2002 incident when
9 someone reportedly had a hangman's noose, right?

10 A. Yes. Yes.

11 Q. And apparently they also said some things to you
12 that weren't appropriate at that time, correct?

13 A. Yes.

14 Q. And then back in 2002 because of that you filed
15 a complaint with the Ohio Civil Rights Commission,
16 correct?

17 A. Yes.

18 Q. All right. And then after that Ohio Civil
19 Rights Commission complaint you filed a civil lawsuit
20 over those events, correct?

21 A. Yes.

22 Q. And then you settled that civil lawsuit with the
23 district, correct?

24 A. Yes.

25 Q. And executed a release with respect to that

1 **lawsuit?**

2 A. I'm not sure.

3 **Q. Okay. But you do recall that you settled that**
4 **lawsuit?**

5 A. Yes.

6 **Q. Okay. And then according to the complaint in**
7 **this matter, the next OCRC that you file is 15 years**
8 **later in 2017, right?**

9 A. Yes. What date that was?

10 **Q. 2017.**

11 A. Yes.

12 MR. GILBERT: You're talking about the
13 OCRC, correct?

14 MR. McLANDRICH: Yes.

15 BY MR. McLANDRICH:

16 **Q. And it sounds as if the events in 2002 continue**
17 **to haunt you. Is that right?**

18 A. Yes. Exactly. That's a fact.

19 **Q. Those events plus other events that occurred in**
20 **your life effect how you see things that happen to you**
21 **in the world. Is that fair?**

22 A. Would you say that again?

23 **Q. Sure. So I've reviewed your Portage Path**
24 **records. Let me be more clear about it and start over.**
25 **In reviewing the Portage Path records I see where you**

1 **revealed to them other things that happen to you during**
2 **your life that you felt were race discrimination outside**
3 **of Akron Public Schools. Fair?**

4 A. There were some things that -- if you're talking
5 about when I was 6 years old, that was something that I
6 didn't even understand, didn't even know it was race
7 related. Are you talking about the ice cream incident?

8 **Q. That's one of them, yes.**

9 A. At that point I didn't even understand that. I
10 didn't know what was going on at that point. I didn't
11 understand that until many years later. If I shared
12 some other things you would have to tell me, because we
13 talk about a lot of stuff.

14 **Q. Okay. So let's just deal with the 2002 incident**
15 **then.**

16 A. Okay.

17 **Q. So the events that happened at APS in 2002 is,**
18 **as we've agreed, continued to haunt you, yes?**

19 A. Yes.

20 **Q. And you continue to think about them, continue**
21 **to find it disturbing?**

22 A. Yes.

23 **Q. All right. And even all this time later, it's**
24 **18 years later, it's something that you continue to**
25 **speak to your therapist about and seek therapy for?**

1 A. That with other things, yes.

2 **Q. And the events of 2002 affect how you've seen**
3 **other things that have occurred at APS, right?**

4 MR. GILBERT: Objection. You can go
5 ahead and answer if you know. Don't try to guess or
6 speculate as to what you're therapist may or may not
7 think.

8 A. Okay.

9 MR. McLANDRICH: I'm not asking about
10 his therapist just to be clear. Let me ask it over.

11 MR. GILBERT: Let me get out my
12 objection. My objection is that that calls for a
13 medical professional conclusion. I don't know if this
14 witness is capable of separating that out like you're
15 suggesting, so I'm objecting because it does require
16 medical opinions. Don't give medical opinions, Mr.
17 Garnett. If you can answer the question, go ahead and
18 answer.

19 BY MR. McLANDRICH:

20 **Q. Let me just clarify things here. At no time am**
21 **I ever asking you to render a medical opinion or legal**
22 **opinion or anything else. What I want to know is what**
23 **you know. Okay?**

24 A. Okay. I'll try to answer that the best that I
25 can. Is that okay?

1 **Q. Yes. Go ahead.**

2 MR. GILBERT: What's the question?

3 BY MR. McLANDRICH:

4 **Q. The question is, how you view other events that**
5 **happened to you at APS, is that affected by the events**
6 **of 2002?**

7 MR. GILBERT: Same objection. Go
8 ahead and answer if you can.

9 A. Okay. Let me try to answer this. When it came
10 time for me to became a head custodian that situation
11 effected me as far as my decision to became a head
12 custodian because I didn't want that hangman noose stuff
13 to happen on my watch. I became the head custodian
14 because of that situation. I wanted to make things
15 better. Whether a person was black, white, male,
16 female, young or old, I wanted to be someone that they
17 could come to in my building. You're not going to get
18 hangman nooses in my building. You're not going to hear
19 nigger in my building and you're not going to be
20 disrespected or treated wrong. Does that answer your
21 question of how that affected me as far as that
22 situation?

23 BY MR. McLANDRICH:

24 **Q. Well, it's an answer. That's fine. We can move**
25 **along and ask more questions.**

1 A. Okay.

2 **Q. So do you believe that events subsequent to 2002**
3 **occurred to you because of the events of 2002?**

4 A. You have to say that one more time. I'm sorry.

5 **Q. Sure. Do you think that anything else that's**
6 **happened to you Akron Public School happened because of**
7 **the events of 2002?**

8 MR. GILBERT: Objection.

9 A. Absolutely.

10 BY MR. McLANDRICH:

11 **Q. Okay. Tell me what those things are.**

12 A. In '07, I think somebody mentioned Ken Ferris'
13 name in there deposition. My best memory, '07, end of
14 September, if I got this right, my mom passes away on a
15 Saturday. I have an interview Monday with Ken Ferris
16 and Mark Hagan. Mark Hagan passed away. I have meeting
17 on Monday with them for a job opportunity for operator
18 one. This operator one position called for a Class A
19 CDL, which I had one at the time in my wallet. Instead
20 of him hiring me, he hired two white custodians who
21 didn't have class A CDLs and at that time everybody was
22 talking about Mark Garnett and the hangman situation. I
23 feel I didn't get the job because of me filing the
24 charge. There was no other reason.

25 I had the -- the reason that I was given as to

1 why he didn't pick me was because the guys said they
2 have 90 days to get their Class A CDL. As I followed up
3 with it he said if they didn't get it, I'd get a call.
4 They didn't get their CDL in 90 days and I still didn't
5 get a call. As a matter of fact, Ken Ferris -- a year
6 later I couldn't applied for that job again, and you
7 could check those records too, they actually changed how
8 you could get a job in the grounds department at the
9 time. You could no longer apply like I did. You had to
10 work in the grounds department for a year before you
11 could even apply for the job at the time. That's what I
12 heard.

13 **Q. Okay. What's the next event?**

14 A. Give me a second. I continued not to be
15 supported by supervisors. I wasn't being supported.

16 **Q. What does that mean?**

17 A. Well, when I became -- I might be missing some
18 things but let me start there. When I became assistant
19 custodian I would have pool workers that come out to
20 building and pool workers wouldn't do their jobs. Pool
21 workers would come to me -- one of them actually told me
22 while I was trying to get them to work and explain what
23 their work duties should be, come on time, do your job,
24 you don't leave early -- excuse me. One of them told me
25 that John Beverlin told them -- this is the exact words,

1 excuse my language, but John Beverlin told him that he
2 doesn't fucking work for me. That's what the guy said.
3 I don't fucking work for you. John told him to tell me
4 that I don't fucking work for you. I've been told by
5 John Beverlin that I don't run the building, which I'm
6 sure we'll get into that a little bit later also. I was
7 allowed to be downgraded by the principal because of
8 that situation.

9 **Q. I'm sorry. Before you move on I just want to**
10 **understand what you're saying. When you say**
11 **"downgraded," you're referring again to that same job**
12 **evaluation?**

13 A. Yes.

14 **Q. And that you think was related to events of**
15 **2002?**

16 A. Absolutely.

17 **Q. And what's your basis for that belief?**

18 A. She wasn't allowed to do it. There's been other
19 custodians -- if you look at the evaluation -- I
20 evaluate people. The way that an evaluation works, if
21 you look at the back of the evaluation when you begin to
22 downgrade someone you don't just downgrade them. It's a
23 six month evaluation. If a person, if you feel like
24 they're going south, you give them three months, or a
25 mid term evaluation. You sit down and talk to them and

1 say this is where you're at right now, continue this way
2 and this is where you're going to end up.

3 Another thing too, I can't downgrade anybody not
4 even to a 70 unless there's documentation saying I gave
5 you a verbal warning here, a written warning here.
6 There's paperwork that allows that. You don't just sit
7 down with a person after six months and say you failed
8 and there's no other conversation about it.

9 **Q. All right.**

10 A. Management saw that, management being John
11 Beverlin, Tom Kekela and Matt Frame they seen this
12 paperwork -- let me stop there because you probably got
13 another question. I think I made the point as far as
14 the evaluation.

15 MR. GILBERT: If you have other things
16 to answer you can fully respond to the question.

17 A. Okay. They allowed this to happen. I sent an
18 e-mail to John Beverlin after I got that evaluation and
19 I said listen, Mr. Beverlin, she downgraded me. I've
20 never had a verbal warning, never had a written warning
21 and never knew that this was going to be my score. I
22 was very surprised that she gave me this score. When I
23 shared that information with John Beverlin, John
24 Beverlin got in touch with the principal and said you
25 need some paperwork and that's when paperwork started

1 coming from everywhere, him letting her know.

2 John Beverlin wanted this to happen. He didn't
3 stop it from happening. He could have easily had the
4 conversation that I had with him with her letting her
5 know on the back of this evaluation this is how this
6 works and this is how it should be done. Neither
7 Beverlin, Frame or Tom Kekela stepped in to have
8 anything to do with that. Also, if there was anything
9 that happened at the building -- I can't remember when,
10 but I do know Mike Critchfield was coming out to the
11 building and speaking with a previous principal, you
12 know Mark sued the board, which was trying to get me in
13 trouble.

14 **Q. I'm sorry. Say that over again.**

15 A. Mike Critchfield came out to a previous
16 principal that we had in the building.

17 **Q. When was this?**

18 A. This probably was 2013 or 2014. I think
19 Critchfield was still here at that time I believe.

20 **Q. Before we talk about Critchfield, can we talk**
21 **about Bruce with the evaluation?**

22 A. Yes. Go ahead.

23 MR. GILBERT: Wait a minute. He
24 didn't finish his answer, though. Somebody said you
25 know he sued the board. Who was that?

1 A. That was Mike Critchfield and also John Beverlin
2 came out to the same principal at a different time when
3 he became custodial coordinator, he came out to the
4 building and brought that same fact up to the principal,
5 the same principal that Mike Critchfield did.

6 BY MR. McLANDRICH:

7 **Q. Who is this?**

8 A. The principal?

9 **Q. Yeah. Give me the principal.**

10 A. John Beverlin and Mike Critchfield approached a
11 previous principal saying you know Mark sued the board.

12 **Q. Who is this previous principal?**

13 A. That would be Angela Brooks -- or Angela Harper.
14 I don't know if she's still married. It's either Angela
15 Harper or Angela Harper-Brooks.

16 **Q. How do you know that they told Ms. Brooks this,**
17 **or Ms. Harper?**

18 A. She told me.

19 MR. GILBERT: Who told you?

20 A. Ms. Brooks because she was very surprised that
21 they brought it up. She had mentioned to them -- it was
22 along the lines -- you'd have to ask her, but it's along
23 the lines of do you know what's going on and she said
24 yeah, I guess -- I can't remember. I don't want to say
25 anything that might be wrong. I'll leave it at that,

1 but they did have conversations in the office with
2 Ms. Brooks about me suing the board.

3 BY MR. McLANDRICH:

4 **Q. So what I want to know is, to the best of your**
5 **memory, what did Ms. Brooks tell you?**

6 A. She came to me and said, Mark -- she came to me
7 and said they brought up your hangman noose situation or
8 that you sued the board. I think it was just that you
9 sued the board. That's to the best of my recollection.

10 **Q. And then what happened as a result of them**
11 **telling her that, anything?**

12 A. I think they wanted her to turn against me.

13 **Q. And did she?**

14 A. Oh, no. She didn't.

15 **Q. Okay. What else do you believe has happened to**
16 **you at APS because of the incident in 2002?**

17 MR. GILBERT: Mr. McLandrich, you
18 asked him when that occurred and I don't think he gave
19 you an answer. Can he respond to that as well?

20 MR. McLANDRICH: Yeah.

21 BY MR. McLANDRICH:

22 **Q. Tell me when that occurred.**

23 A. With Critchfield, like I said, that was probably
24 2013 or 2014. I'm thinking maybe 2014. John Beverlin I
25 believe it was -- it might have been 2015. I may have

1 these dates wrong but I think once Critchfield left and
2 John Beverlin stepped in the position that's when he had
3 come out. I'm doing my best as trying to remember.

4 **Q. That's all you can do. In any event, Ms. Harper**
5 **didn't take any adverse action toward you?**

6 A. No.

7 **Q. So what else do you believe happened to you at**
8 **APS that you trace to the events of 2002?**

9 A. I mentioned not being supported. Not being
10 supported.

11 **Q. And that's when you were the assistant**
12 **custodian?**

13 A. And not being a supported as a head custodian.
14 There were many complaints I had. As a matter of fact,
15 I have some e-mails that John Beverlin really pretty
16 much stop communicating with me. I got e-mails showing
17 me reaching out to John Beverlin but there's never any
18 response. I'm pretty sure I've got those e-mails.

19 **Q. When is that that he stopped communicating with**
20 **you?**

21 A. As head custodian.

22 **Q. When? What year?**

23 A. That was probably the end of 2016, end of 2017.
24 Somewhere along those lines. Definitely 2017 it was
25 hard trying to reach him trying to get in touch with

1 him. There were times that he wouldn't even answer my
2 phone calls.

3 **Q. And what did that result in for you as a head**
4 **custodian? What did that cause you to suffer or not get**
5 **or so forth?**

6 A. Well, being a new head custodian you're not
7 really -- you're pretty much handed keys and said this
8 is your building. There's still questions and things
9 that you haven't done. Night custodian is totally
10 different than day custodian. Even though we fill in
11 sometimes, it's a totally different beast. So you need
12 help from people who have been custodians before so you
13 reach out to them for advice. There were times when
14 other things that happened in -- you want me to
15 continue?

16 **Q. Yeah. Sure.**

17 A. There were things in my building that I couldn't
18 get done like when you put in work permits that I
19 believe had to do with that. As a matter of fact, there
20 was a guy -- let me stay on track. There were things
21 that I couldn't get done around my building.

22 **Q. Like what?**

23 A. Well, like trying to get my parking lot
24 resealed. Getting the parking lot resealed. There were
25 other buildings there were parking lots were being

1 sealed and Crouse wasn't. Like I said, I wasn't being
2 supported as a head custodian either. You know, when I
3 come out and the guy -- I wouldn't call him the
4 ringleader of the hangman noose situation, but when they
5 came in the room he had the noose around the assistant's
6 neck at the time -- his name was Mike Withrough. When I
7 went to Crouse, at old Crouse, what Mike Critchfield did
8 was sent that guy out to Crouse to work with me and when
9 I seen him come across that building, I almost called
10 the police. I was wondering why is this man in my
11 building? Why is he allowed to work with me? I gave
12 Mike Critchfield a call and said why is this man in my
13 building after everything I went through across town
14 with him? Mike Critchfield said he can't pick and
15 choose. I'm trying to remember his exact words but
16 that's pretty much all we got, so we have to send him
17 out there.

18 **Q. What year is this?**

19 A. It was when I was at old Crouse, so somewhere
20 between 2003 to 2007 or '08. And I'm thinking it's more
21 close to 2003 because of the way that things were going.
22 I'm bouncing around a little bit, but what happened to
23 me after another thing that happened, Mike Critchfield
24 -- I had complained about this hangman noose thing for a
25 long time. It went on for about six months. I had

1 complained to the union. I complained to the head
2 custodian. I complained to Mike Critchfield. I
3 complained to Mr. Parker. I don't know his first name.
4 I complained to Mr. Parker. At the end of six months
5 Mr. Parker -- anyway, Mike Critchfield came up to the
6 building unannounced, he comes up and said go to your
7 locker and get your things. So I don't know what's
8 going on. I'm thinking I'm fired, I don't know. And so
9 he tells me to come down to a meeting I think the
10 following week with a Patty Tschantz. I used to know
11 how to spell that name. I don't know her position. She
12 may have had the same position that Debra Foulk has now,
13 possibly.

14 Anyway, Mike Critchfield takes me out of the
15 building but before he kind of walks me around the
16 building he kind of walks me around to gather up all of
17 my things but he was following behind me, but he was
18 following behind me with the assistant custodian, the
19 same guy that came in the room with the noose around his
20 neck. That sent a powerful message out to me saying
21 these guys are putting me out the building, not only is
22 he putting me out of the building, he's putting me out
23 of the building with the guy who I call the ringleader
24 of it because he was the assistant custodian at the
25 time.

1 So when I go to the meeting with Patty Tschantz,
2 what they do -- this is another thing because of the '02
3 situation. I don't know if you know where Goodyear
4 Middle School is compared to East High School, but you
5 could look out the window at East High School and see
6 Goodyear Middle School. What they decided to do is take
7 me out of Goodyear Middle School, which I didn't want to
8 leave. I'd rather those guys transfer, because I knew
9 my enemies there, but what happened is they sent me to
10 East to where the ringleader of the hangman noose
11 situation at Goodyear Middle School, his father worked
12 at East High School and he was the head custodian. I
13 told them at the meeting with Mike Critchfield --

14 MR. GILBERT: You okay? Let's take a
15 break.

16 A. I think I can keep going. Sometimes this
17 happens. Let me try to get through this.

18 MR. GILBERT: Do you remember the
19 question that you're responding to?

20 A. Yes. I told Patty Tschantz and Mr. Critchfield
21 that I was afraid.

22 MR. GILBERT: Why don't we go ahead
23 and take a break. Counsel, can we take a ten minute
24 break?

25 MR. McLANDRICH: As long as

1 Mr. Garnett needs we'll take.

2 MR. GILBERT: I know you're in the
3 middle of an answer, a very long answer. We'll come
4 back and pick up on that. Are you okay? Do you want to
5 finish that answer and then take a break?

6 A. I'd like to try again.

7 MR. GILBERT: You want to do it now or
8 a little later?

9 A. Would it be okay if I try again? If I don't
10 make it through it then maybe I'll take a break.

11 MR. GILBERT: Is that okay, John, if
12 he continues on and tries to answer this question fully?

13 MR. McLANDRICH: That's fine. I'll
14 refer to Mr. Garnett.

15 A. Okay. I told Mr. Critchfield and Patty Tschantz
16 that I was afraid to go to that building. I told them
17 that I was very uncomfortable so I went to that building
18 with a lot of fear. I told them, why are you sending me
19 to a building where this guy's father worked or
20 stepfather? They told me that I shouldn't have any
21 problems, but still I was uncomfortable with that. Not
22 only was the head custodian his step dad, I still had
23 other ties at Goodyear Middle School where the head
24 custodian didn't do anything about what was happening to
25 me. He was a football coach at East.

1 So at that time I was very paranoid and I didn't
2 understand why they was sending me right up the street.
3 I would have went anywhere. When I got the opportunity
4 that's when I ended up at Crouse because it was clear
5 across town and no custodians wanted to work at Crouse.
6 Crouse always had a bad reputation as far as the area,
7 cars broken into, gun shots and different things like
8 that. And like I said, moving up to -- you know, never
9 being -- like I said, it was Ken Ferris and I think
10 after Ken Ferris Mike Critchfield took his job and
11 became the custodial coordinator. And you know the
12 history of Mike walking me around with the ringleader of
13 the hangman noose, so he became custodian coordinator
14 and then after that John Beverlin.

15 Like I said, not only did they send Mike
16 Withrough who had the noose in my face and chased me
17 down the hall with the noose, not only did they bring
18 him out to old Crouse, when the new Crouse was built he
19 ended up showing up out there and I believe that John
20 Beverlin sent him that time. Mike Critchfield sent him
21 the first time and John Beverlin sent him the second
22 time.

23 MR. GILBERT: Okay. Let's take a ten
24 minute break then.

25 - - - -

1 (Thereupon, an off-the-record discussion was held.)

2 - - - -

3 BY MR. McLANDRICH:

4 **Q. So when we took the break, Mr. Garnett, you were**
5 **cataloging what you believe happened at APS because of**
6 **the events in 2002. When we stopped you were talking**
7 **about your transfer to East. Is there anything else you**
8 **want to discuss before we talk about the next item?**

9 A. The transfer to East. That's how I ended up at
10 Crouse. I bid on Crouse school and nobody really wanted
11 to work at Crouse so I took that school to go as far
12 away as I can. I mentioned that with Mike Withrough
13 they allowed him to come out to the building at old
14 Crouse and at the new Crouse with me.

15 Also, bringing it more up to date with not being
16 supported by John Beverlin, Tom Kekela, Matt Frame or
17 Mike Critchfield as an assistant or head custodian. One
18 example, I would get the worst pool workers. We do have
19 good pool workers that work for the board but I was
20 never given those kind of pool workers. I always had
21 the pool workers that were untrained and more mental
22 issues than others. I was given aggressive people.
23 They allowed them to verbally assault me, not do their
24 work and not discipline them and all these things I feel
25 is stemmed from the '02 situation, these guys just not

1 liking me because of that.

2 **Q. All right. When you were at East -- was is it**
3 **Withrough, the fellow that was transferred to East and**
4 **then Crouse?**

5 A. No. That was me transferred to East.

6 **Q. I'm sorry.**

7 A. They transferred me to East with the guy that
8 was the ringleader of the hangman noose situation named
9 Ryan Webster and his stepfather was at the head
10 custodian at East, and that's where they decided to
11 transfer me was to East High School.

12 **Q. Did that stepfather abuse you in any fashion?**

13 A. Well, I don't know what their plans were but
14 when I brought up the fact -- they didn't know that I
15 knew it was his stepfather, but I brought that up to
16 Patty Tschantz and Mike Critchfield in that meeting.
17 Once I brought that up and let know that I was, first of
18 all afraid to go there, and that I knew it was Ryan
19 Webster's stepfather, I didn't know if they had plans to
20 continue with the harassment or whatever, but to answer
21 your question nothing happened there. Although nothing
22 happened, it didn't help my paranoia at all.

23 **Q. I understand that, I just want to know if**
24 **anything happened, though.**

25 A. No.

1 **Q. Who was the fellow that went with you to old**
2 **Crouse and new Crouse?**

3 A. Mike Withrough I believe.

4 **Q. And did he do anything improper towards you at**
5 **old Crouse or new Crouse when that transfer happened?**

6 A. No. When he came the first time I was just an
7 eight-hour custodial worker. It terrified me to see him
8 walking through the building because I didn't know why
9 he was there. The second time he came I was an
10 assistant custodian and when he came to my building as
11 an assistant custodian I was still uncomfortable but I
12 treated him with nothing but respect. He was still an
13 eight-hour custodial worker at the time, but still I was
14 uncomfortable.

15 **Q. So you would have been above him at that point?**

16 A. I would have been his supervisor.

17 **Q. All right. And when you say "old Crouse,"**
18 **you're talking about a separate physical building? In**
19 **other words an older building?**

20 A. Yeah. Right next to where the new Crouse is
21 now.

22 **Q. And they built a new building and tore down the**
23 **old one?**

24 A. Yes.

25 **Q. Okay. Are there other events that happened you**

1 **at APS that you attribute to the event from 2002?**

2 A. Yes. I did mention the evaluation, correct?

3 **Q. Yes.**

4 A. Okay. There's probably other things that will
5 come to me that I can't think of right now.

6 **Q. If you think of them, we'll come back to them.**

7 A. Okay. They also told me that because of the
8 evaluation I couldn't bid on buildings.

9 **Q. You mentioned that.**

10 A. Okay. That was Matt Frame who came and told me
11 that.

12 **Q. We already talked about once you got that**
13 **evaluation you were already on leave?**

14 A. Right. Right. Which the evaluation had to be
15 corrected. When I got that downgrade I saw so many
16 buildings, high schools, junior high schools just
17 passing me by. I thought that was part of the whole
18 thing with the bad evaluation. I can't bid on a
19 building and I can't advance. Like that was all part of
20 their plan.

21 **Q. I want to go back and ask you some follow-up**
22 **questions. How is it that you believe that the poor**
23 **evaluation that you received from Ms. Bruce was due to**
24 **the events of 2002? What makes that connection in your**
25 **mind?**

1 A. She knew about the hangman noose also. As a
2 matter of fact, she came back to my office and she sat
3 down and was wondering about some permits around the
4 building to get some different work done. I explained
5 to her that we're usually the last building to be taken
6 care of and, you know, she wanted to know why that was.
7 We ended up having a conversation about the '02
8 incident. She didn't seem too pleased with me saying
9 that I sued the board, or took them to court. I
10 expected a different response but her body language and
11 how she looked at me, she was upset about that.

12 **Q. Let me just understand this. So she came to**
13 **your office area and asked you about permits which would**
14 **be requests to have work done at the school, right?**

15 A. Yes.

16 **Q. All right. And then you told her that Crouse is**
17 **always the last one to get work done and you told her**
18 **that believe that the reason that Crouse being the last**
19 **one to have work done is because of the events of 2002**
20 **and because you sued the district?**

21 A. Right. That's why I wasn't getting supported.

22 **Q. And then based on her reaction to that you felt**
23 **that she should have been more supportive of your**
24 **position because of the 2002 incident?**

25 A. Say that again.

1 Q. Sure. Her reaction to you telling her that you
2 thought she would be more supportive of you but she
3 somehow seemed put off. Is that what I'm getting?

4 A. Yes. Yes.

5 Q. And is it possible that she was put off by the
6 fact that you believe Crouse isn't getting its permits
7 done because of the 2002 incident? In other words, she
8 doesn't agree that 18 or 15, 16 years later that that's
9 why permits aren't being permitted at Crouse?

10 MR. GILBERT: Objection. Go ahead and
11 answer if you know.

12 A. It wasn't just with that. As time went on when
13 she began to speak to the supervisor she actually used
14 that '02 situation against me by talking with John
15 Beverlin and somehow coming together to set me up, used
16 that '02, because I told her everything. What I mean is
17 that I told her about how John Beverlin felt about me,
18 Tom Kekela felt about me and Matt Frame, but yet she
19 became their friends. It was like she was always
20 reaching out to them especially in 2017, that she was
21 using everything that I told her against me is how I
22 felt.

23 BY MR. McLANDRICH:

24 Q. So I take it that you told her that you're
25 belief was, you know, Beverlin doesn't like me, Kekela

1 **doesn't like me, Frame doesn't like me. Is that what**
2 **you're saying? Is that what you told her?**

3 A. I pretty much told her strongly about Beverlin
4 and Kekela.

5 **Q. Okay. And what was it that you told her is, I**
6 **guess, what I'm trying to find out?**

7 A. I told her that they were upset with me about
8 the '02 incident.

9 **Q. And how do you know that Beverlin and Kekela**
10 **were upset about 2002 incident?**

11 A. We've had conversations about it. Beverlin sat
12 in my office -- even in 2016, he came out to my building
13 to tell me I didn't run the building, that it wasn't my
14 building. I was wondering from that comment that he
15 made, who runs the building? I'm the one cutting the
16 grass and cleaning the outside and inside, but that
17 hangman noose situation came up in the office.

18 **Q. And how did it come up?**

19 A. I can't remember how it came up.

20 **Q. Did you bring it up or did he?**

21 A. I can't remember how it came up but I know that
22 John Beverlin wasn't happy. It might have come up
23 through conversations about Critchfield which was his
24 previous boss. You know, maybe I brought it up. Maybe
25 I had mentioned Critchfield coming out to the building

1 saying something to a principal. I'm trying to remember
2 the best I can. Maybe I mentioned something about
3 Critchfield coming out to the building and about the
4 hangman noose situation. I just remember clearly John
5 Beverlin looking at me with an angry face and I knew
6 about that.

7 **Q. So it's not what he said, it's how he looked?**

8 A. It's what he said too, I know about that.

9 **Q. That's what he said when you brought it up, I**
10 **know about that?**

11 A. Well, I don't know if he'd been out to talk to
12 the principal at that time. I can't remember. The
13 timing as far as that is kind off with me right now as
14 far as when he came to the principal and did the same
15 thing that Mike Critchfield did.

16 MR. GILBERT: I'm going to object to
17 the question because the witness has said he doesn't
18 know who brought it up at that meeting. He said about
19 Mr. Frame bringing it up at another time as well.

20 MR. McLANDRICH: Those are improper
21 objections, Ed, and I'd appreciate you not testifying on
22 the record.

23 MR. GILBERT: That was your question.
24 I'm objecting to the form of the question.

25 BY MR. McLANDRICH:

1 **Q. So when Mr. Beverlin said you don't run the**
2 **building, the principal runs the building, don't they?**

3 A. The principal -- I forget how they stated it.

4 **Q. Well, when you had the meeting that you recorded**
5 **and you produced that recording to me where you met with**
6 **Ms. Bruce and I think Mr. Frame again, and Ms. Hines**
7 **there was this discussion about who runs the building at**
8 **that time and the principal runs the building, right?**

9 A. He said run the building, we weren't speaking
10 about running the building. We were speaking about
11 running the custodial crew. That's what I was talking
12 about. I was talking about pool workers, when the pool
13 workers are supposed to work and different things like
14 that. It wasn't the building. Of course I don't run
15 the building, but we were talking about something else.
16 We were talking about custodial staff.

17 **Q. And as far as the custodial staff goes, as head**
18 **custodian if you wanted to change the schedule or change**
19 **who works at the building you have to go through your**
20 **superiors to get those changed, correct? You can't**
21 **unilaterally change people's work hours, correct?**

22 A. No. I can't change their work hours and I tried
23 that.

24 **Q. And so you have to go through your superiors if**
25 **you want to change work hours?**

1 A. Right.

2 Q. Now you've talked several times about not having
3 enough support at Crouse, right?

4 A. Right.

5 Q. And by that you meant -- well, you tell me, but
6 did that include not having enough staffing? Is that
7 what you mean by that?

8 A. Ask that question again.

9 Q. Sure. When you say that you don't have enough
10 support at Crouse, is that an allegation that you didn't
11 have enough workers?

12 A. It wasn't that I didn't have enough workers, it
13 was the workers that they were sending and the hours
14 that they would bring them in. I'm the head custodian.
15 You can't bring me two -- you can place two five-hour
16 people with an eight-hour worker but then you bring them
17 in 2:30 to 7:30, or even if you brought in two six-hour
18 people 2:30 to 8:30, that doesn't work for the building.
19 It doesn't work when I have permits that last some time
20 between 9 and 9:30 and the building still needs somebody
21 to maintain it.

22 If I make a suggestion to say, hey, I need to
23 stagger these people, one in 2:30 to this and then
24 another one 4:30 to 10:30, that fell on deaf ears. My
25 building still can't get clean. It's not having more

1 people work more hours, it's staggering them and then
2 it's also having people that are trained in the
3 building. It was often I had people that weren't
4 trained and also people that weren't compliant. I had
5 people sneaking, doing other things beside working.

6 MR. GILBERT: Mr. McLandrich, you
7 asked a question earlier on several questions ago and
8 Mr. Garnett has not been able to fully respond to that.
9 I'm going to ask you to ask that question again.

10 MR. McLANDRICH: I'm not sure what
11 you're talking about, Ed.

12 MR. GILBERT: Excuse me. You talked
13 about Mr. Beverlin and he also raised Mr. Frame in
14 regards to the 2002 incident bringing that up to date
15 and what Mr. Frame had said. He covered Beverlin, but
16 you didn't allow him to finish Mr. Frame.

17 MR. McLANDRICH: I never stopped him
18 from saying anything, Ed.

19 MR. GILBERT: He mentioned the two of
20 them, but you never went back to that to allow him to
21 finish his answer. That's all I'm saying.

22 MR. McLANDRICH: I appreciate your
23 help with my deposition, Ed. Thank you.

24 A. May I finish?

25 MR. GILBERT: You're allowed to finish

1 your answer if you have more.

2 MR. McLANDRICH: I'll ask you the
3 question when I want to you answer it.

4 MR. GILBERT: I'll just note on the
5 record that you didn't allow him to finish.

6 MR. McLANDRICH: Put whatever you want
7 on the record, Ed. You're doing a fine job of that.

8 A. Okay. I'll wait. The last thing I said I was
9 talking about pool workers doing other things that they
10 weren't supposed to be doing.

11 BY MR. McLANDRICH:

12 **Q. You said you talked to -- let's address Ed's**
13 **issue and get it off the table here. You said that you**
14 **talked to Mr. Frame about the 2002 incident. Tell me**
15 **about that.**

16 A. Mr. Frame talked about that incident many times.
17 We shared a lot of things. His PTSD my PTSD. We shared
18 a lot of things about the '02 incident.

19 **Q. So you would bring the 2002 incident up to him**
20 **as part of those discussions?**

21 MR. GILBERT: Objection.

22 A. I don't know how we were personally talking. I
23 think he said that he heard about it.

24 BY MR. McLANDRICH:

25 **Q. Okay. And just out of the blue he offered that**

1 **he heard about it?**

2 A. We were personally talking. He was telling me
3 that he had PTSD, that he was in the service, jumped off
4 the back of humvee, hurt his back and things like that.
5 General conversation.

6 **Q. So it was in the context of discussing the fact**
7 **that you both had PTSD and you brought up the issue of**
8 **the 2002 incident as one of the sources of your PTSD.**
9 **Is that what you're telling me?**

10 A. I believe I understand that question. I think
11 the answer is yes.

12 **Q. All right. Let's go to Exhibit K if we could,**
13 **please. Mr. Garnett, pull up Exhibit K.**

14 A. Okay.

15 - - - -

16 (Thereupon, Defendants' Exhibit K was marked for
17 identification.)

18 - - - -

19 MR. GILBERT: Can you see it,
20 Mr. Garnett?

21 A. My wife left and let me see if my daughter -- it
22 needs a swipe thing to get back in it. Yes. I see it.

23 BY MR. McLANDRICH:

24 **Q. So the first page of Exhibit K is an e-mail from**
25 **you to Debra Foulk dated March 30th, 2017. Do you see**

1 **that?**

2 A. Yes.

3 **Q. And you're requesting to have a meeting with her**
4 **because there's some things that you'd like to talk to**
5 **her about.**

6 A. Yes.

7 **Q. Okay. Does this include the pool workers and**
8 **staffing at the building?**

9 A. That's possible.

10 **Q. All right.**

11 A. I know it had to do with Beverlin, possibly Matt
12 Frame.

13 **Q. And by that do you mean issues that you were**
14 **having with them and that you were unhappy somehow?**

15 A. Yes.

16 **Q. If you turn back, the seventh page should be an**
17 **e-mail from you to Debra Foulk dated April 24th, 2017.**
18 **Do you see that?**

19 A. I see April the 21st. Did I go too far?

20 **Q. This is an April 24th e-mail.**

21 A. Okay. I'm going in the right direction. I'm on
22 it.

23 **Q. Okay. And it starts with "Here are the work**
24 **schedules that you asked for," right?**

25 A. Yes.

1 Q. And it continues on, and maybe I'll just read it
2 into the record so we can discuss it. "All the things
3 that I do are not written in my schedule because it
4 would take another page. If I could get the pool
5 worker, Thomas, to work 4:30 to 10:30 Monday through
6 Thursday, and 4:30 to 9:30 on Friday I think that would
7 be much better. I can get the other Mikal," M-I-K-A-L,
8 "to start on time, he's a lot more focussed and does
9 what I ask him to do (he's a team player.) I stopped
10 working the overtime because I couldn't get Thomas to
11 stay focussed. I would like to work the two hours over
12 that they were giving me, and that I believe me and
13 Mikal can get most of the first floor done. Thomas can
14 help Donnelle," D-O-N-N-E-L-L-E, "like you said and
15 finish up with main office complex on first floor at the
16 end of the night, but I think he should start with
17 helping Ms. Donnelle first thing because he will be
18 distracted starting on the floor. I will not be back to
19 work until Wednesday, and I don't think filters were
20 changed while I was off so if you would let me work the
21 two hour overtime again, I think we'll be fine the rest
22 of the year. Let me know what you decide. I feel
23 better talking with you. PS, Thomas could also help
24 with the evening permits."

25 A. Yes.

1 Q. And then at the bottom is an attachments, work
2 schedules PDF, which is the next few pages in the
3 exhibit, the next three pages.

4 A. Okay.

5 Q. And so, my question is this e-mail addresses a
6 number of the things that you've been talking about.
7 The schedules of the pool workers, the assignments of
8 the pool worker, and how their work is going to be
9 oriented, correct?

10 A. Yes.

11 Q. And then as a result of that meeting if you go
12 past those schedules that are attached she writes you
13 back later that same day. If you find it, it's a March
14 24th e-mail at 2:36. Do you see that?

15 A. I see April 24th.

16 Q. I'm sorry. April 24th. Yes. It says, "Mark,
17 I've received your information. I'll be reviewing then
18 discussing with others upon their return to the
19 district. Thank you for sitting and talking with me
20 last Friday, Debra." Correct?

21 A. Yes.

22 Q. And then the next page is your response to her
23 dated May 11, 2017. It says, "I just want to say hi --

24 A. Let me make sure I know where you are.

25 Q. Sure. The next page, May 11, 2017.

1 A. Okay.

2 Q. Mark Garnett to Debra Foulk. "I just want to
3 say hi. Things have gotten much better and I feel so
4 much better. Thanks for listening and hearing. You
5 made a difference," and then there's an Emoji next to
6 that, right?

7 A. Yes.

8 Q. And so the way that I read this, and correct me
9 if I get it wrong, it sounds like she addressed your
10 concerns and whatever changes she made you think things
11 were much better?

12 A. The reason that I wrote that e-mail from my
13 memory after meeting with her Mr. Beverlin came out to
14 the building, stopped me in the cafeteria and he told me
15 that he was going to bring me a new zero-turn because up
16 until that time I just had a walk behind. Since that
17 happened after the meeting with Debra Foulk and now
18 we're talking about the zero-turn that made me feel
19 pretty good. I thought that had stemmed from the
20 meeting that I had with Debra Foulk, but I found out
21 later that things really didn't get better, they got
22 worse after speaking with Debra Foulk.

23 Q. Okay. And we'll get to that in a minute but if
24 you turn then to the next page, the next e-mail dated
25 May 11th, 2017, from Debra Foulk back to you, it says,

1 "Mark, nice to hear from you. Yes I worked on a plan
2 with John and Rob to see what alterations/support that
3 could be provided. Please take full advantage of the
4 plan put into place to support your learning and improve
5 the operation of your building. Thanks for reaching out
6 to me, Debra," right?

7 A. Yes.

8 Q. Obviously, from the e-mail anyway, there were
9 some changes to alter the support that you were
10 receiving, correct?

11 MR. GILBERT: Counsel, you misread
12 that one. It says "your learning and improve the
13 operations of your building."

14 MR. McLANDRICH: That's what I read.

15 MR. GILBERT: Okay.

16 BY MR. McLANDRICH:

17 Q. I'll read it again to make sure there's no
18 confusion.

19 A. Okay.

20 Q. The last sentence says "please take full
21 advantage of the plan put in place to support your
22 learning and improve the operation of your building."
23 It says you, but meant your, right?

24 A. Right.

25 Q. And so this e-mail suggests that there was a

1 **plan put in place to alter the support that you'd been**
2 **provided up until then, right?**

3 A. A plan for what?

4 **Q. It doesn't say specifically. It says,**
5 **"alterations/support." It doesn't say anything about a**
6 **zero-turn.**

7 A. Right. Well, she told me in the meeting because
8 we also talked about the '02 incident, and she seemed to
9 be upset about that from what I remember in the meeting.

10 **Q. Okay. Was there any change in the support that**
11 **was provided to you? You're saying there was no change?**

12 A. What I'm saying is that I found out later that
13 these were just words. You can read this e-mail and say
14 that sounds nice and it sounds like there was a plan,
15 but what actually was the plan because she was upset in
16 the meeting about finding out that I sued the board.

17 **Q. All right. So when you say "things have gotten**
18 **much better," you weren't being truthful in other words?**

19 A. No. It wasn't that I wasn't being truthful. It
20 was the fact that I was getting the zero-turn and I
21 thought that the meeting that I had with her turned John
22 Beverlin around. The only thing that I ever wanted was
23 for me to work with people and people to work with me.
24 If that's what was happening, that's what I thought what
25 happening.

1 Q. Is it your testimony that when you wrote the
2 e-mail that says, "things have gotten so much better,"
3 that that was a reference to the zero-turn?

4 A. That was a reference to how I felt.

5 Q. It's not saying -- your next phrase in that is
6 "I feel so much better," so that's the reference to how
7 you felt, right?

8 A. Exactly.

9 Q. But the phrase before that, "things have gotten
10 much better," that's obviously not referring to how you
11 felt, right?

12 A. The only thing that I can tell you is why I
13 wrote this letter. When John Beverlin came out, me and
14 him had a conversation after talking about Debra Foulk,
15 we had a conversation in the cafeteria as if I was his
16 best friend all of a sudden, and we spoke of a
17 zero-turn. That's what started me to write this e-mail.

18 Q. This meeting in the cafeteria, is that one of
19 your other recorded meetings?

20 A. No. That one wasn't recorded.

21 Q. One of your records you have labeled as making
22 some reference to comments about a black man. Do you
23 recall that?

24 A. Yes.

25 Q. And I've listened to that recording and I

1 presume you have as well, correct?

2 A. Yes.

3 Q. I didn't hear any reference to a black man in
4 that recording. Can you tell me where I could find
5 that?

6 A. She made references to black men all the time.

7 Q. I'm talking about that recording that you
8 labeled to have a comment about black men. I don't hear
9 any comment in there. I'm wondering if you could point
10 me to it.

11 MR. GILBERT: Objection. Who are we
12 talking about? You said "she." Bruce?

13 MR. McLANDRICH: Yes.

14 BY MR. McLANDRICH:

15 Q. It's a recording of yourself and Ms. Bruce
16 talking, correct?

17 A. Yes.

18 Q. All right. In the recording of you and Ms.
19 Bruce talking -- again, I've listened to the whole
20 thing. I don't hear any negative references about black
21 men and I'm wondering if you could point me to any
22 statements in that recording where she makes negative
23 comments about black men or preferring white custodians,
24 or not wanting a back custodian or anything like that?

25 MR. GILBERT: Objection. When you say

1 "negative," I don't know what that means. I object.

2 MR. McLANDRICH: Ed, I appreciate that
3 and, you know, if the witness doesn't understand what
4 negative means then he can tell me, otherwise we'll
5 proceed with the deposition.

6 A. Again, my testimony is that she's made these
7 comments over and over. In this tape if you listen she
8 says "what the black men don't do," and I'm trying to
9 remember. She said "the black men come in there and do
10 half shit."

11 BY MR. McLANDRICH:

12 **Q. That's on that recording, that's your testimony?**

13 A. I think that's on the recording.

14 **Q. All right. When did you start making**
15 **recordings?**

16 A. I don't remember. Probably, I think -- I can't
17 remember.

18 **Q. Why did you start making recordings?**

19 A. Because the things that the principal would say.
20 A lot of things I didn't get on tape, you know, but I
21 thought it might be a good idea to start recording some
22 of the things that she was saying.

23 **Q. The only thing that I heard on that tape that**
24 **was significant as far as these allegations go, she said**
25 **that you were slow. Do you recall hearing that on that**

1 **tape?**

2 A. Yes.

3 MR. GILBERT: Object to the question.
4 You can answer the question, but if you don't agree with
5 that editorial, then don't agree with the editorial.

6 BY MR. McLANDRICH:

7 **Q. That's fine. I'll ask it over. I heard her say**
8 **on that tape that you were slow. Do you recall hearing**
9 **that you move slow at times?**

10 A. Yes.

11 **Q. All right. Now she doesn't say -- correct me if**
12 **I'm wrong, she doesn't say on that tape that you move**
13 **slow because you're a black man or anything like that,**
14 **right?**

15 A. No.

16 MR. GILBERT: You're saying that was
17 not on the tape. Is that your question?

18 BY MR. McLANDRICH:

19 **Q. My question is does he agree with me that on the**
20 **tape she says he moves slow, but doesn't attribute**
21 **moving slow to being a black man, is that correct?**

22 A. Well I contributed that it was negative because
23 of previous things that she would say.

24 **Q. And I appreciate that and we can talk about**
25 **other things, but if you answer the actual question I**

1 ask it's much more productive. I'm asking about the
2 tape now. We can talk about other conversations and we
3 will. I'm asking about on that tape she doesn't say you
4 move slow because you're a black man, right?

5 A. I feel that's what she meant.

6 Q. I understand what you might have felt. My
7 question is what she said.

8 A. Okay.

9 MR. GILBERT: Objection. Being
10 argumentive. If you can recall, Mr. Garnett, go ahead
11 and answer the question.

12 A. I don't know.

13 BY MR. McLANDRICH:

14 Q. The tape will speak for itself, obviously, but
15 you don't recall her saying it's because you were a
16 black man, right?

17 MR. GILBERT: On the tape, you're
18 saying?

19 MR. McLANDRICH: On the tape.

20 A. Oh, okay. No.

21 BY MR. McLANDRICH:

22 Q. In the complaint you allege that Ms. Bruce said
23 that she preferred Caucasian custodians?

24 A. Yes.

25 Q. When did she say that?

1 A. She had started that in 2016.

2 MR. GILBERT: I didn't hear that.
3 What was the answer again?

4 A. She started referencing things like that in
5 2016, end of 2016.

6 BY MR. McLANDRICH:

7 **Q. So very early on during the time that she was at**
8 **the building, right?**

9 A. Yes.

10 **Q. How did that come up? Did she say that out of**
11 **the blue?**

12 A. She wanted me to do her work. She wanted me to
13 do some work that she was supposed to do and I explained
14 to her that I had enough stuff on my plate as far as
15 what I was doing. Once I get my job down, then maybe I
16 would look into that but she spoke about another
17 custodian that she worked with that did a lot of her
18 work that she was supposed to do. She said it was a
19 better experience working with him.

20 **Q. Did this have to do with the fire drill test or**
21 **something like that?**

22 A. That was part of it.

23 **Q. What else was it?**

24 A. She also said that he hung up her bulletin
25 boards. That fire test was a thing that he used to do.

1 **Q. What else did that other fellow do that you**
2 **didn't do?**

3 A. Put pictures and letters up on boards out in the
4 hallway. She told me that he pretty much acted like he
5 ran the building.

6 **Q. Were there other things that this person did**
7 **that you weren't doing?**

8 A. I'm pretty sure there was, but you were talking
9 about her work.

10 **Q. I understand. Perhaps a bad question. What**
11 **other parts of her work was this other custodian doing**
12 **that she wanted you to do that you weren't doing?**

13 A. Like I said, I already mentioned the fire drill,
14 paperwork and the bulletin boards that people would see
15 coming through the building and things like that.

16 **Q. Is there anything else that we're missing there?**

17 A. I'm sure there is, but that's as far as I know.

18 **Q. She mentioned this other custodian used to do**
19 **these things and then did she said, well, he did these**
20 **things because he was white and you don't do them**
21 **because your black?**

22 A. She said that she preferred white custodians.

23 **Q. That's to the best of your recollection --**

24 MR. GILBERT: Let him finish, please.

25 A. You're talking about in the beginning of the

1 school year and I'm saying this stuff didn't just come
2 out all of a sudden right then and there. I'm saying
3 that stuff led up to what she was saying. It led up to
4 preferring white custodians.

5 BY MR. McLANDRICH:

6 **Q. Well, that's fine. I appreciate that. Let's go**
7 **back to when this started. You said it was early 2016**
8 **where she was talking about this other custodian that**
9 **used to do things for her, right?**

10 A. Yes.

11 **Q. During that conversation did she say anything to**
12 **the effect of I prefer white custodians?**

13 A. As far as what I remember, how do I know that
14 the custodian was white? So it was brought up. I
15 didn't know who she worked with when she came to the
16 building.

17 **Q. My question is very simple. Did she say I**
18 **prefer white custodians or words to that effect?**

19 A. She did say that she preferred white
20 custodians.

21 **Q. At that time?**

22 A. No. Not at that time.

23 **Q. That's what I'm asking about. I'm asking about**
24 **that conversation in early 2016 did she say during that**
25 **conversation I prefer white custodians?**

1 A. No. She probably mentioned that he was white
2 but other than that, no. She didn't say that at that
3 time.

4 **Q. Did she say he was white?**

5 A. That's what I was led to believe.

6 **Q. Did she said he was white?**

7 MR. GILBERT: When counsel? He said
8 she said that in late 2016? You're asking about --

9 MR. McLANDRICH: I'm asking about
10 early 2016. I'm asking about that first conversation
11 still, so let him just answer the question.

12 MR. GILBERT: In early 2016.

13 MR. McLANDRICH: In early 2016, I'm
14 still on that first conversation. Did she say that the
15 other custodian was white?

16 MR. GILBERT: He's already
17 testified that the comment --

18 MR. McLANDRICH: Don't interrupting
19 this deposition. I'm going to call the court if you
20 keep this up.

21 MR. GILBERT: You're confusing the
22 witness. You're talking about the first conversation in
23 2016, correct?

24 MR. McLANDRICH: We've been on this
25 first conversation the entire time. It's the only

1 conversation that I'm asking him about.

2 BY MR. McLANDRICH:

3 **Q. In this first conversation in early 2016 when**
4 **she's talking about this other custodian, did she say**
5 **this other custodian was white?**

6 A. I don't know how I knew he was white. She would
7 have had to have mentioned it. If he's white she would
8 have had to have mentioned it.

9 **Q. So do you recall her saying -- do you have a**
10 **memory, a specific memory of her saying this other**
11 **custodian was white?**

12 A. Like I said, I don't know how I knew he was
13 white, but the only reason I would have known he was
14 white -- my understanding if he is white, that's where I
15 got it from. I never talked to anyone else about her
16 custodian where she came from.

17 **Q. All right. I appreciate that, but my question**
18 **is very simple. Do you have a specific memory of**
19 **Ms. Bruce in early 2016 in this first conversation**
20 **saying that the other custodian was white?**

21 A. No. I can't think of it off the top of my head,
22 no.

23 **Q. Do you have a specific memory of knowing during**
24 **that conversation in 2016 whether that other custodian**
25 **was, in fact, white?**

1 MR. GILBERT: Objection. Counsel, are
2 you talking about early 2016 or late 2016?

3 MR. McLANDRICH: If you listen to the
4 question, and I'll repeat it.

5 BY MR. McLANDRICH:

6 **Q. In that conversation in early 2016 did you, in**
7 **fact, know that other custodian was white?**

8 MR. GILBERT: Objection. Asked and
9 answered.

10 MR. McLANDRICH: That's not a proper
11 objection.

12 BY MR. McLANDRICH:

13 **Q. Did you know the other custodian was white in**
14 **that first conversation in early 2016?**

15 A. If you're asking for me to say specifically, I
16 can't remember.

17 **Q. When was the first time that you could**
18 **specifically remember Ms. Bruce saying I prefer white**
19 **custodians or words to that effect?**

20 A. It would have probably been the end of 2016.

21 **Q. And as best you can recall what were the**
22 **specific words she used?**

23 A. We might have been in the cafeteria sweeping up
24 and it was right after -- you know she always made
25 reference to me being slow and working circles around me

1 and it was during a time when she was actually walking
2 away, where I could hear her says she preferred white
3 custodians.

4 **Q. Is that what you recall her saying, I prefer**
5 **white custodians?**

6 A. As she was walking away as she normally do.

7 **Q. What other occasions did she say that?**

8 A. She said her experience with Matt -- there was a
9 guy who filled in for me and the first time that he
10 filled in she wanted him to be the head custodian of the
11 building.

12 **Q. And who is this?**

13 A. I think his last name is Bueser maybe. Matt
14 Bueser. That's who she continuously compared me to.

15 **Q. What did she say about Matt Bueser?**

16 A. That he does the job faster, better.

17 **Q. What else did she say about Matt Bueser?**

18 A. About him being younger.

19 **Q. Anything else she said about Matt Bueser?**

20 A. I can't think of it right now, but there's
21 probably other things.

22 **Q. All right. And is Matt Bueser white?**

23 A. Yes.

24 **Q. And from that did you infer that she preferred**
25 **him because he was white?**

1 MR. GILBERT: Objection. Asked and
2 answered and he already said that.

3 MR. McLANDRICH: Ed, stop it.

4 MR. GILBERT: Don't tell me to stop
5 nothing. I'm raising objections that are asked and
6 answered.

7 MR. McLANDRICH: I heard your
8 objection.

9 BY MR. McLANDRICH:

10 **Q. From that did you infer that she preferred**
11 **Bueser because he was white?**

12 MR. GILBERT: Same objection. Go
13 ahead and answer the question.

14 A. She compared me. The only thing I know is she
15 compared me to Matt, who was 26 at the time. I was 56.
16 I believe he was 26 at the time, but she wanted him in
17 the building.

18 BY MR. McLANDRICH:

19 **Q. How do you know he was 26?**

20 A. How do I know he was 26? Maybe he told me.

21 **Q. On what other occasions did she say that she**
22 **prefers white custodians?**

23 A. She said the one time when she walked away.

24 **Q. Is that the time that you already told me about?**

25 A. Yeah.

1 **Q. Any other times other than that one?**

2 A. Through her actions --

3 **Q. I'm asking about statements, not action. We can**
4 **talking actions in a minutes, but I want to focus on**
5 **statements right now.**

6 A. I can't remember at this time.

7 MR. GILBERT: Can the court reporter
8 read that question back?

9 - - - -

10 (Thereupon, the requested portion of the record was read
11 back by the reporter.)

12 - - - -

13 A. There was another time we were doing a
14 walkthrough in the building as far as work permits, and
15 she had brought up the fact of her experience, you know,
16 with white custodians.

17 BY MR. McLANDRICH:

18 **Q. Did she use the word white?**

19 A. Yes.

20 **Q. What did she say?**

21 A. That her experience is better with white
22 custodians.

23 **Q. When was this?**

24 A. I don't remember when that was. That was during
25 the time that Matt Bueser was there and I don't know if

1 she was talking about a previous custodian, or talking
2 about Matt Bueser at the time he was in the building.

3 **Q. What was Boozer's position?**

4 A. Assistant custodian.

5 **Q. Was he a temporary or a permanent assistant**
6 **custodian?**

7 A. He was filling in for me.

8 **Q. Who was he filling in for?**

9 A. He was filling in for me when I was off. He
10 would come in in the morning.

11 **Q. Did you work in the building at the same time as**
12 **Bueser?**

13 A. Yes. Well, I was in the building but he filled
14 in for me when I was off.

15 **Q. Which time when you were off, do you know?**

16 A. What do you mean?

17 **Q. What were you off for?**

18 A. Probably vacation.

19 **Q. Any other times that you remember her making**
20 **statements that she preferred white custodians?**

21 A. No. I'm pretty sure that's it right now.

22 **Q. If you think of any let me know. On what**
23 **occasions did she say that she felt that black**
24 **custodians --**

25 MR. GILBERT: I just want to make sure

1 that Mr. Garnett finished his answer.

2 BY MR. McLANDRICH:

3 **Q. Did you have something else that you were going**
4 **to add?**

5 A. No.

6 MR. McLANDRICH: We okay to go then,
7 Ed?

8 MR. GILBERT: Yeah. Thank you.

9 BY MR. McLANDRICH:

10 **Q. On what occasions did Ms. Bruce say that she**
11 **felt black custodians were too lazy and wouldn't do the**
12 **work?**

13 A. She told me that she didn't want black
14 custodians in the building.

15 **Q. Okay. When did she say that?**

16 A. She said that -- I remember one of the guys,
17 last name Whimbley. I can't remember the other black
18 custodian that came out, but I believe after those two
19 were out of the building and she said she didn't want
20 them back in there, I believe. I don't know for sure,
21 but after that time they never had another black
22 custodian in that building fill in, at least not for my
23 position. I'm not 100 percent sure on that.

24 MR. GILBERT: He asked you when did
25 she say it? When did she make that comment?

1 BY MR. McLANDRICH:

2 Q. Let me start this over. What I'm looking for
3 are statements by Ms. Bruce that she felt black
4 custodians were too lazy and would not do the work.

5 A. I can't remember the date.

6 Q. Okay. Regardless of date she did say that, is
7 that what you're saying?

8 A. Ask the question again.

9 Q. Sure. Did Ms. Bruce ever say black custodians
10 were too lazy and wouldn't do the work?

11 A. She said she didn't want them in the building.

12 Q. All right. And when she said she didn't want
13 them in the building she was referring to Whimbley and
14 somebody else?

15 A. Well, black custodians.

16 Q. Did she use the words black custodians?

17 A. Yes, she did.

18 Q. She said I don't want black custodians in the
19 building? Is that what she said?

20 A. No. She didn't say it like that. Let me see.

21 Q. Well, what did she say?

22 A. She said the black men didn't come in there and
23 work, didn't work right. Something to that effect.
24 They came in and did things half-ass, didn't work like
25 shit.

1 **Q. And was she referring to those specific men, or**
2 **just black men in general?**

3 A. She's speaking of black men in general.

4 **Q. Did she say that on one occasion, or more than**
5 **one occasion?**

6 A. More than one occasion.

7 **Q. And to the best of your recollection when was**
8 **this?**

9 A. Time, month?

10 **Q. Month, year, whatever you got.**

11 A. I don't remember. I would be guessing.

12 MR. GILBERT: John, are you ready to
13 take a lunch break any time soon?

14 MR. McLANDRICH: Yeah. In just a
15 minute.

16 BY MR. McLANDRICH:

17 **Q. On how many occasions did she make that comment**
18 **about black men?**

19 A. I didn't keep count of it.

20 **Q. Two, five, 50, ten?**

21 MR. GILBERT: Go ahead and answer, if
22 you can.

23 A. I'm trying to think. At least a couple of
24 times.

25 BY MR. McLANDRICH:

1 **Q. You have a specific recollection of at least**
2 **twice?**

3 A. Not right now I don't.

4 **Q. So you have a specific recollection of once?**

5 A. Sure. The time that we were in the cafeteria
6 when she said the black man come in here and do things
7 half shit. Why they come in here and do that.

8 MR. GILBERT: John, I do have a 12:15.
9 It won't last more than 15 minutes.

10 MR. McLANDRICH: That's fine. We'll
11 take our break now. What time do you want to come back?

12 MR. GILBERT: Is 12:45 adequate?

13 MR. McLANDRICH: Fine for me.

14 MR. GILBERT: Mr. Garnett, is 12:45
15 okay with you?

16 A. Yes. That's fine.

17 - - - -

18 (Thereupon, an off-the-record discussion was held.)

19 - - - -

20 BY MR. McLANDRICH:

21 **Q. So, Mr. Garnett, I received from your lawyer**
22 **this morning a number of photographs of items. A drill**
23 **and a battery charger and a coat and a pair of boots and**
24 **some other items. I frankly don't have them all in**
25 **front of me. Am I to understanding that you're now**

1 **claiming there was more than a drill and battery charger**
2 **that was left in your locker and therefore missing?**

3 A. Yes.

4 **Q. And when did you come to this new recollection?**

5 A. It was probably almost a year later.

6 **Q. And how was it that you came to that**
7 **realization?**

8 A. I was in the basement of my home that I was
9 moving out of, which I did move out of, and as I was
10 cleaning up the basement and I know the weather was
11 changing I started thinking where was my winter gear and
12 that's when it triggered me to think that's what I left
13 in that locker.

14 **Q. So because you couldn't find the winter gear in**
15 **the basement you assumed that you left it in the locker**
16 **and it came up missing?**

17 A. No. I didn't assume. I knew I left it in
18 there.

19 **Q. The battery charger that you left in the**
20 **custodial locker, was it just the battery charger?**

21 A. What do you mean?

22 **Q. Did it perform functions other than being a**
23 **battery charger?**

24 A. I don't remember.

25 **Q. What do you mean you don't remember?**

1 A. I don't remember.

2 **Q. Did you ever use it for anything other than**
3 **charging a battery?**

4 A. As a matter of fact, I don't think that I had
5 ever used it.

6 **Q. So you took it to work but never had occasion to**
7 **actually use it?**

8 A. I would have got that in probably 2016 when I
9 took over as a head custodian. I bought a lot of
10 equipment, a lot of tools, a lot of gear that a head
11 custodian needs.

12 **Q. So your best recollection as you sit here anyway**
13 **is that you bought the battery charger in 2016, took it**
14 **to work but never used it?**

15 A. Yeah. That's to my best memory, that's correct.

16 **Q. Okay. And to the best of your memory was it**
17 **just the battery charger?**

18 A. If you're saying if it had other things on it, I
19 really don't remember.

20 **Q. Why did you select the one that you send me the**
21 **picture of?**

22 A. That was the one that I could best remember.

23 **Q. I see it's a Dewalt. Do you have a memory that**
24 **your battery charger was a Dewalt?**

25 A. Not necessarily. I don't remember what it was.

1 **Q. The one that you sent me a picture of is not**
2 **just the battery charger, and that's why I ask you these**
3 **question.**

4 A. Well, I went by what it looked like.

5 **Q. Okay. Do you have any receipts or box or**
6 **anything?**

7 A. No. I looked for them on the computer, online.
8 I must have paid cash or I had some cards that was
9 cancelled at the time. I couldn't find it.

10 **Q. All right. When you say that you were moving**
11 **out of the basement, did you move homes or did you just**
12 **empty things out of the basement?**

13 A. I moved homes.

14 **Q. When did you move homes?**

15 A. Well, I was preparing to move -- I'm trying to
16 remember. Actually I got to back up. I got something
17 wrong. Let me think. I think in 2018, maybe in
18 November. It's hard to remember. It was 2019.

19 MR. GILBERT: What was 2019?

20 A. In the fall of 2019. I'm kind of confused right
21 now trying to remember. I know I didn't even know on
22 that locker incident. I forgot that I even had a second
23 locker. So time went on, so it had to be maybe almost a
24 year or maybe in July, August maybe to the best of my
25 memory.

1 BY MR. McLANDRICH:

2 **Q. What's this date that you're trying to come up**
3 **with?**

4 A. I'm trying to think of when -- I remember it was
5 a while that -- it took a little while for me to
6 remember what was in that locker and I'm thinking July,
7 August.

8 MR. GILBERT: Mr. Garnett, you have to
9 help us because we're both trying to figure out what
10 question you're responding to.

11 BY MR. McLANDRICH:

12 **Q. Let's back up and start over. So on August**
13 **31st, 2018 was when you went to Crouse, you got your**
14 **review and you cleaned out the one locker, right?**

15 A. Yeah.

16 **Q. And then some period of time later -- and**
17 **there's an e-mail and we could find it if we need to.**
18 **Where you wrote an e-mail about the second locker and**
19 **that's when you raised the issue of the drill and the**
20 **battery charger. Do you recall that?**

21 A. Yes.

22 **Q. All right. And then there's some period of time**
23 **between that e-mail and when you came to the realization**
24 **that you think these other items were also left behind?**

25 A. Yeah. It was some time had passed and I can't

1 really remember now when it was, but some time had
2 passed and I remember the situation but I can't really
3 remember the time or date.

4 Q. And I'm not so concerned with exactly when on
5 that. At some point later you come to the realization
6 that you believe other items are missing, essentially
7 that's this winter clothing that you sent me pictures
8 of?

9 A. Yes.

10 Q. A jacket, bib overalls, and a pair of boots and
11 maybe something else?

12 A. Yes.

13 Q. And I think there was also a picture of a
14 handheld voice recorder?

15 A. Yes.

16 Q. What's that about?

17 A. That's what it was.

18 Q. And you're saying that was also in that locker?

19 A. Yes. That was something that I mentioned to
20 Matt Frame on August 31st. I remembered that was in
21 there.

22 Q. Okay. We'd also been talking about the fact
23 that you moved homes and I had asked you when you moved
24 and then you were trying to think of that date. Do you
25 recall when you moved?

1 A. Right now I can't even remember that.

2 **Q. Was it this year that we're in, do you know?**

3 A. Just let me think for a second.

4 **Q. Sure. Take your time.**

5 A. I've been through a lot. I can't even remember.

6 I can't remember.

7 **Q. We'll move on. If it comes to you, let me know.**

8 **Otherwise we'll cover some other things.**

9 A. Okay. I could probably get that information.

10 Can you hold on for one second?

11 **Q. Sure. Go ahead.**

12 MR. GILBERT: John, what's your
13 understanding of what he's looking for?

14 MR. McLANDRICH: I think it's the date
15 that he moved. I'm looking for something proximate.
16 It's not that important.

17 A. I think it was maybe September of last year.

18 BY MR. McLANDRICH:

19 **Q. September of '19?**

20 A. Yes.

21 **Q. That's when you think that you actually moved?**

22 A. Yeah. Around that time.

23 **Q. Approximately. I understand.**

24 A. Yes. So that would have been, if I'm correct,
25 then I would have found out about the other items right

1 before that.

2 **Q. As you were starting to pack up and clean up to**
3 **move?**

4 A. Yes.

5 **Q. All right. Prior to this incident where the**
6 **locks were removed from your locker had you had any**
7 **issues with Trevor Schrom, any problems with him?**

8 A. Yes.

9 **Q. Tell me about that.**

10 A. Well, I had a problem with him smoking.

11 **Q. Okay. Go ahead.**

12 A. I had a problem with him smoking. He had verbal
13 warnings, written warnings. I had problems a him
14 bringing weapons into the building, which I told him not
15 to bring weapons into the building anymore. I asked him
16 to leave. I actually asked him to leave the building
17 one time because he came in and he had a habit of
18 wanting to come in and take a break.

19 He was smoking again back in my chiller area and
20 I asked him how come he didn't start his work schedule.
21 He told me he was sick, so I asked him to leave. I said
22 I can't have you working here while you're sick. If
23 something happens to you, then that's on me. He said
24 that he was going to call Buck, and I think he actually
25 called Buck. I had problems with him doing things that

1 I didn't ask him to do and he knew that he wasn't
2 supposed to do, which he would get information from the
3 principal and even though I would tell him, look, we
4 don't move those desks and that's for grounds
5 department. He would move items that he was instructed
6 not to.

7 **Q. Anything else with him?**

8 A. Yes. There is, but that's all I can remember
9 for right now. Like I said, he seemed like he actually
10 wanted to run the building is what it was.

11 **Q. So the weapons, what kind of weapons were those?**

12 A. Knives, hook knives, machetes. He had a trunk
13 full of them.

14 **Q. What did he actually bring into the building
15 itself?**

16 A. A hook knife and a machetes.

17 **Q. He brought a machete into the building?**

18 A. Yes. And also a knife with a funny type of grip
19 on it, that had a hook to it. It was illegal.

20 **Q. Okay. What did he get the verbal and written
21 warnings for?**

22 A. Smoking and I think it was -- I can't think of
23 any other ones if there was.

24 **Q. Okay. Did he ever make any racially disparaging
25 comments to you?**

1 A. No.

2 **Q. How about Nicholas Ache, what sort of problems**
3 **did you have, if any, with Nicholas Ache?**

4 A. When Nicholas Ache came to the building I ended
5 up going back to the building one evening, he was
6 sitting back in the break room and I went to my locker,
7 which is right in front of the break table and he got
8 defensive like, what are you doing here in the building?
9 I'm not use to custodians coming back up to the
10 building. So I was in my locker I told him I forgot
11 something and I left out of the building, but the next
12 day when he came into work I guess he lied to Donnelle
13 McNary and told her -- he came back to me and said
14 Donnelle said Mr. Garnett had come back to the building
15 to spy on people. He said that McNary said that. I
16 went to McNary and asked her, because of course it
17 didn't sound like her to me, and she said, of course she
18 didn't say that.

19 I said I've been having problems with a lot of
20 pool workers up in this building and if you want to work
21 in this building I expect you to come up here and start
22 on time. I had to have him start his work at 2:30, he
23 needs to actually be on the floor because my job was
24 doing paperwork. I told him if you want to work in this
25 building we've had these problems with pool workers

1 before, I need to you come in and do your job.

2 **Q. Any other problems with Nick?**

3 A. That was pretty much it.

4 **Q. No racial comments by Nicholas?**

5 A. No.

6 **Q. Is it possible that Ms. McNary deny that to you**
7 **even though she might have said it to him?**

8 MR. GILBERT: Objection.

9 A. I knew McNary. This guy was new, so I knew
10 McNary didn't say that. He didn't deny that he didn't
11 lie. He just kind of nodded his head like, okay, you
12 got me.

13 BY MR. McLANDRICH:

14 **Q. What evidence do you have of a conspiracy**
15 **between Bruce and Frame?**

16 A. Well, she had started calling him -- to my
17 knowledge, Matt Frame was called so much he was out of
18 the building 15 times, which I never knew he was out of
19 the building 15 times. Every time -- if something
20 happened with the cafeteria where I couldn't get my work
21 done then she was calling Matt Frame to come out of the
22 building.

23 **Q. Anything else?**

24 A. As far as not removing the pool workers.

25 **Q. Anything else?**

1 A. There's other things. I'll probably have to
2 come back to it.

3 Q. If you think of them, let me know. When you're
4 saying not removing the pool workers, are you saying
5 that essentially you were complaining about the pool
6 workers but they weren't being taken out of the
7 building?

8 A. Yes.

9 Q. Are there any specific pool workers that I ought
10 to be aware of in that regard?

11 A. Yes. Sam Page.

12 Q. P-A-G-E?

13 A. I would think so.

14 Q. Okay. Anybody else?

15 A. Thomas Hill.

16 Q. Isn't Mr. Hill eventually removed?

17 A. He was removed, yes. After the verbal assault.

18 MR. GILBERT: Can he finish his
19 answer?

20 MR. McLANDRICH: I'm not stopping him
21 from doing anything.

22 MR. GILBERT: He asked you about the
23 pool workers. You identified two. Are there any more?

24 MR. McLANDRICH: I was going to ask
25 him that if you gave me a chance, Ed.

1 A. Yes. Sheila. I don't know her last name.

2 BY MR. McLANDRICH:

3 **Q. Anybody else?**

4 A. Linda Harris.

5 **Q. These are all people that you asked to be**
6 **removed that you think weren't removed quickly enough?**

7 A. Yes.

8 **Q. They were all eventually removed and reassigned,**
9 **right?**

10 A. Yes.

11 MR. GILBERT: Have you completed your
12 answer?

13 A. There was probably others. Just off the top of
14 my head that's what I remember.

15 BY MR. McLANDRICH:

16 **Q. Okay. If you think of more, you'll let me know.**
17 **What's the basis of allegation that Schrom and/or Ache**
18 **cut the locks off your lockers based on some instruction**
19 **or plan by Bruce and/or Frame?**

20 A. I don't understand the question.

21 **Q. Sure. The complaint alleges that the locks were**
22 **cut off your locker based on some instruction or order**
23 **or plan in place by Bruce or Frame. I want to know the**
24 **basis of that allegation.**

25 A. I'd like to say something and if you'd like to

1 ask me the question again, I'd like to answer my best,
2 but I never knew what the truth was. I never knew what
3 the truth was. There was allegation that somebody told
4 them to do it and then somebody said they didn't tell
5 them to do it. I don't know what's going on with that
6 situation.

7 **Q. But as we sit here you're not aware of Ms. Bruce**
8 **telling or planning with somebody to have them cut those**
9 **locks off your locker?**

10 A. Are you asking me what I believe?

11 **Q. I'm asking you what you know, not what you might**
12 **believe in your heart, but what you know in your brain?**

13 A. Well, if you're not asking me what's in my heart
14 for facts.

15 **Q. I'm asking for facts, not beliefs. If there's**
16 **facts, I want those.**

17 MR. GILBERT: Objection.

18 A. I don't have any facts.

19 MR. GILBERT: You could tell him what
20 you believe.

21 MR. McLANDRICH: Let's just deal with
22 facts for now.

23 A. Like I said, I didn't understand the whole
24 situation. There was a bunch of things as I listen to
25 people's deposition testimony, there's a lot of things

1 that left me still confused on what actually happened.

2 BY MR. McLANDRICH:

3 Q. And I appreciate all of that, but are you aware
4 of any facts that indicate to you that Ms. Bruce told
5 somebody to removed those locks off those lockers?

6 A. No.

7 Q. How about Mr. Frame, are you aware of any facts
8 that suggest to you that Mr. Frame told anybody to take
9 those locks off those lockers?

10 A. No.

11 Q. Are you aware of any facts that suggest the two
12 of them together had some plan or gave somebody some
13 direction to cut those locks off those lockers?

14 A. Ask that again.

15 Q. Sure. Are you aware of any facts that indicate
16 Ms. Bruce and Mr. Frame together had a plan or gave
17 somebody an order to remove the locks from those
18 lockers?

19 A. No.

20 Q. Do you have any facts that suggest to you that
21 Trevor Schrom cut those locks off that locker because
22 you're African American?

23 A. That, or he didn't like me, or both.

24 Q. I get that, but let's just stick with African
25 American for now. Do you have any facts that tell you

1 **he cut those locks off your locker because you're**
2 **African American?**

3 MR. GILBERT: Asks for a legal
4 conclusion. Go ahead and answer the question if you
5 can.

6 A. The only facts that I have is that I'm black and
7 he's white and my locks were cut off.

8 BY MR. McLANDRICH:

9 **Q. Is that the same answer for Nicholas Ache?**

10 A. Yes.

11 **Q. Any additional facts that would suggest to you**
12 **that Nicholas Ache participated in cutting the locks off**
13 **your lockers because you're African American and he's**
14 **white?**

15 A. That's it.

16 **Q. The negative review or the review that was less**
17 **than completely satisfactory by Ms. Bruce, do you recall**
18 **appealing that to the Civil Service Commission?**

19 A. Yes.

20 **Q. And then they ordered that review to be redone,**
21 **correct?**

22 A. Yes.

23 **Q. And then you received that second review and you**
24 **signed it on August 31st, 2018, correct?**

25 A. Yes.

1 Q. And while it was somewhat different it still
2 wasn't as positive as your prior reviews, correct?

3 A. Yes.

4 Q. And because of that you appealed it again,
5 correct?

6 A. Yes.

7 Q. And on that second appeal the review was upheld
8 by the Civil Service Commission as being appropriate,
9 correct?

10 MR. GILBERT: Objection.

11 A. By default I would say.

12 BY MR. McLANDRICH:

13 Q. By default in the sense that they didn't order
14 it to be redone and void the review, correct?

15 A. When I got the paperwork back I was supposed to
16 appeal it in five days so when I went there and didn't
17 appeal that paper within five days, that's my
18 understanding. I had nothing to say at that point.

19 Q. But the order you didn't appeal was an order
20 finding the review to be valid, correct?

21 A. Yes. It wouldn't change. They didn't change
22 it. They left it like it was.

23 Q. Let's go to Exhibit C, please.

24 - - - -

25 (Thereupon, Defendants' Exhibit C was marked for

1 **identification.)**

2 - - - -

3 A. I got it.

4 BY MR. McLANDRICH:

5 **Q. So this is the ruling from your hearing officer**
6 **for your first appeal of your January 1, 2017 through**
7 **June 30, 2017 grading period, right?**

8 A. Yes.

9 **Q. And it has the period of time up at the top if**
10 **you look. "The grade sheet on appeal is for the time**
11 **period of January 1, 2017, to January 30, 2017," do you**
12 **see that at the top?**

13 A. No, I don't.

14 **Q. It's the second sentence of that first small**
15 **paragraph at the very top of Exhibit C.**

16 A. You said Exhibit C, right?

17 **Q. Yes. It should say "The Civil Service**
18 **Commission" up in the right-hand corner.**

19 A. Right. I see that.

20 **Q. And then the first sentence says "The following**
21 **is my written decision in regards to the grade sheet."**

22 A. Yes.

23 **Q. It goes on, and then the second sentence talks**
24 **about it being January 1, '17 through June 30, '17,**
25 **correct?**

1 A. Yes.

2 MR. GILBERT: Can we correct something
3 here? This is the second --

4 MR. McLANDRICH: You're right, Ed.
5 When you're right, you're right. My apologies.

6 BY MR. McLANDRICH:

7 **Q. This is actually the second hearing of that same**
8 **grade sheet, the revised grading sheet. This one denies**
9 **the appeal. If you turn to the last page you'll see**
10 **where it says, "I am recommending that this appeal be**
11 **denied."**

12 A. I don't have that. It's just not there, but
13 I'll take your word for it.

14 **Q. I don't want to you take my word for it. It**
15 **should be seven pages back right, before Exhibit D.**

16 MR. GILBERT: If you're having
17 problems reading that Mr. Garnett, let us know.

18 A. Okay. Are we still on Exhibit C, though?

19 MR. GILBERT: We're talking about
20 Exhibit C.

21 A. Okay. I see Akron Board of Education. Should I
22 keep going down?

23 BY MR. McLANDRICH:

24 **Q. Yeah. It's like seven pages back.**

25 A. Okay. What am I look for?

1 Q. The very last sentence of the last page.

2 A. Okay. In conclusion?

3 Q. Yes, sir. It says, "In conclusion, to uphold
4 the appeal would be a disservice to both the students
5 and teachers at Crouse School. Therefore, I am
6 recommending this appeal be denied," correct?

7 A. Yes.

8 Q. In that appeal in the ruling, and you could
9 certainly take time to read it, they found that there
10 were deficiencies at the building that justified the
11 review that was given. Is that fair?

12 A. No.

13 Q. Is it not fair because it doesn't say that or
14 because you disagree with it?

15 A. Ask your question again? Since this was against
16 me, of course it's not fair because of all the things
17 that I was trying to do to keep the building clean. I
18 was trying to get these pool workers to work.

19 Q. Okay. And that's your position generally about
20 any deficiencies with the building is that the pool
21 workers and/or the other custodians that were there,
22 they weren't doing their jobs and weren't working hard
23 enough, so if there was a problem with the building, it
24 was because of that, right?

25 A. Not just the pool workers.

1 Q. Well, I know not just the pool workers. That's
2 what I'm saying.

3 A. I didn't have an assistant custodian either.

4 Q. Right. I get that and so because you didn't
5 have an assistant they had given you the two six-hour
6 workers instead and the combination of whoever you had
7 there though that was working with you, your position
8 was that they weren't working hard enough and weren't
9 doing their jobs, so if there was a problem with the
10 building that was why?

11 A. Yes. And also my argument was too in order to
12 even downgrade someone to a 70, you would have to have
13 verbal warnings, written warnings, paperwork to support
14 that.

15 Q. Okay. And is there any policy or procedure or
16 rule in the union contract anywhere that you're aware of
17 that says there has to be these interim warnings?

18 A. It was on the back of the evaluation page.

19 Q. Are you aware of whether the buildings in the
20 Akron Public School systems have different
21 classifications?

22 A. What do you mean?

23 Q. Where the building will be --

24 A. Yes. Yes.

25 MR. GILBERT: Wait for Mr. McLandrich

1 to finish.

2 A. Okay.

3 BY MR. McLANDRICH:

4 **Q. Let's go to Exhibit I. That's the union**
5 **agreement, The Collective Bargaining Agreement.**

6 - - - -

7 **(Thereupon, Defendants' Exhibit I was marked for**
8 **identification.)**

9 - - - -

10 A. I got it.

11 BY MR. McLANDRICH:

12 **Q. Would you go to page 42, and the page numbers**
13 **are at the bottom?**

14 MR. GILBERT: John, I don't have my
15 whole document here. If you're going to refer to a
16 section, can you read it into the record so we're all
17 together on it?

18 MR. McLANDRICH: I'll be happy to.

19 A. I don't have it yet.

20 BY MR. McLANDRICH:

21 **Q. Take your time. I'll read it into the record.**
22 **Before I do that let me ask this question: So Crouse is**
23 **a Class II building, correct?**

24 A. I don't remember.

25 **Q. I hate to do this to you -- let's deal with this**

1 and we'll go back because we have to reference another
2 exhibit to answer that question. Section 5.18, and I'll
3 read it into the record. "A. School buildings will be
4 classified as to number of full time and five (5) hour
5 custodial employees assigned to the buildings. The
6 classification will be: Class I, 1 - 2 1/2 employees;
7 Class II, 2 5/8 - 5 1/2 employees; Class III 5 5/8 or
8 more employees. B. Five (5) hour custodial help will
9 be counted as 5/8 of an employee. Student help shall
10 not count toward employees assigned."

11 That's the whole section. So we can go there,
12 but on Exhibit G it reflects that is Crouse is a Class
13 II building. You could go to G if you want to confirm
14 that I'm saying it correctly. Crouse C II, meaning
15 Class II, correct?

16 A. I'm not there.

17 - - - -

18 (Thereupon, Defendants' Exhibit G was marked for
19 identification.)

20 - - - -

21 MR. GILBERT: It says Class the
22 numeral II and then a three.

23 MR. McLANDRICH: Right. For three
24 employees.

25 MR. GILBERT: How do you figure that?

1 MR. McLANDRICH: Well, if you look at
2 the others, Bridges says two, there's two employees. If
3 you look at Case there's two full-time employees, and a
4 five-hour worker, which we know is 5/8 employee so
5 that's 2 5/8. Crouse shows three full-time workers,
6 three.

7 MR. GILBERT: And you're asking him to
8 verify that? Is that what you're saying?

9 BY MR. McLANDRICH:

10 **Q. I guess the first question is do you agree that**
11 **Crouse is a Class II building?**

12 MR. GILBERT: Objection.

13 A. If it says that.

14 BY MR. McLANDRICH:

15 **Q. All right. Do you have any reason to believe**
16 **that Crouse is something other than a Class II building?**

17 A. No, I don't.

18 **Q. If Crouse is a Class II building pursuant to**
19 **Section 5.18 it would have between 2 5/8 and 5 1/2**
20 **employees, right?**

21 MR. GILBERT: Objection.

22 A. I don't see it. I don't have it. I'm lost, but
23 do you have a question?

24 BY MR. McLANDRICH:

25 **Q. Yeah. If we look at page 42 of the Collective**

1 **Bargaining Agreement, which is Exhibit I --**

2 MR. GILBERT: I'm going to object.
3 You're asking him to interpret the bargaining agreement
4 and I don't know that this witness is qualified enough
5 to do that.

6 MR. McLANDRICH: Ed, I appreciate it
7 but as you well know the rules on depositions allows you
8 to say the word objection and that's it.

9 MR. GILBERT: I disagree.

10 MR. McLANDRICH: Well, then you might
11 want to read the rule because I read it over the lunch
12 hour.

13 MR. GILBERT: I can give a reason for
14 an objection.

15 MR. McLANDRICH: Not if you comply
16 with the rule. With that said, I'm not asking him to
17 interpret the agreement. I'm asking him to read what
18 section 5.18 says and whether I'm reading it correctly.
19 If he wants to disagree with its meaning, he's free to
20 do that.

21 MR. GILBERT: Mr. Garnett, you can
22 answer the question if you understand it.

23 MR. McLANDRICH: That goes for every
24 question.

25 MR. GILBERT: Well, don't try to

1 interpret the law or interpret the contract.

2 A. I'm still try to find the place. I see the
3 classification of building, building service, employees
4 and then there's letter A, school buildings will be
5 classified, is that where you are?

6 BY MR. McLANDRICH:

7 **Q. Are you on Exhibit I?**

8 A. 5.18?

9 **Q. Yes. Yes. Do you see where it says "Class II?"**

10 A. Yes.

11 **Q. And then it says, "2 5/8 - 5 1/2 employees,"**
12 **correct?**

13 A. Yes.

14 **Q. Do you have an understanding that that means a**
15 **Class II building is going to have between 2 5/8 and 5**
16 **1/2 employees?**

17 MR. GILBERT: Objection. You can
18 answer if you understand. Don't guess or speculate.

19 A. I'm not sure.

20 BY MR. McLANDRICH:

21 **Q. It's up to the district to decide what employees**
22 **they assign to a given building, right?**

23 A. Yes.

24 **Q. We're still on Exhibit I. Before I do that, Mr.**
25 **Garnett, with respect to these items that you claim were**

1 **stolen, did you ever make a claim under your home**
2 **owner's insurance for the theft of those items?**

3 A. No.

4 **Q. Is there any reason you didn't?**

5 A. I thought the board was going to take care of
6 it. I thought the board was going the pay for it. And
7 then I couldn't even remember the winter items until
8 months later.

9 **Q. Please go to page 51 of Exhibit I.**

10 A. Got it.

11 **Q. Before we get to that let me just ask you, you**
12 **were a member of the Service Employees International**
13 **Union Local 1 Firemen and Oilers Division 100**
14 **Maintenance, Buildings, Grounds, Warehouse and**
15 **Transportation Employees?**

16 A. Yes. I believe I was.

17 **Q. Okay. So the bottom of that page section 7.03,**
18 **do you see this, "principal permits?"**

19 A. Yes.

20 **Q. And I'll just, again, read it into the record**
21 **for Mr. Gilbert's benefit.**

22 **"A. The term 'principal's permit' as used in**
23 **this Article VII shall mean a principal's permit as that**
24 **term is defined in the current (as of the date of**
25 **ratification) Board's Administrative Procedures for Use**

1 and Rental of Facilities, or any subsequent amendments
2 or modification made thereto by the Board or Business
3 Affairs Office in compliance with Section 5.08(B) of
4 this Agreement?"

5 "B. Principal's permits are granted without
6 custodial service during the time that permit is in
7 effect."

8 "C. Areas used for principal's permits shall be
9 cleaned pursuant to the assign custodian's regularly
10 posted schedule." Are you at all familiar with that
11 section?

12 A. The bottom two sound familiar to me. The very
13 first one you read I have no understanding of that.

14 Q. That's fine. Your understanding of B and C
15 essentially is while the people are there there wouldn't
16 be a custodian, and then afterward the areas they used
17 would just be cleaned during the normal course of the
18 custodian's duties. Is that your understanding?

19 MR. GILBERT: Objection.

20 A. Read that again -- say that again.

21 MR. McLANDRICH:

22 Q. Sure. It looks like you're reading, so go ahead
23 and read and then I'll ask you.

24 MR. GILBERT: You can answer the
25 question when you're ready Mr. Garnett, but I don't want

1 to you guess or speculate.

2 MR. McLANDRICH: I don't either. When
3 you're finished reading let me know and I'll ask you
4 again.

5 A. Okay. Go ahead.

6 BY MR. McLANDRICH:

7 **Q. Do you have an understanding of what**
8 **subparagraphs B and C of section 7.03 mean?**

9 A. Yes.

10 **Q. And what's your understanding?**

11 A. What it says.

12 **Q. Okay. I'm just going to tell you what I think**
13 **it says and then you can tell me if we're on the same**
14 **wavelength.**

15 MR. GILBERT: Objection.

16 BY MR. McLANDRICH:

17 **Q. So what I think B says is that while the permits**
18 **in effect, while the people are there, there's no**
19 **custodian being provided. Is that how you read B?**

20 MR. GILBERT: Objection. Don't guess
21 or speculate. Go ahead and answer, if you can.

22 A. Ask the question again.

23 BY MR. McLANDRICH:

24 **Q. So what B says is that while the permit is in**
25 **effect, while the people are there, no custodian is**

1 **going to be servicing, right?**

2 MR. GILBERT: Objection. Don't guess
3 or speculate.

4 A. Well, I don't really understand what you're
5 asking. I don't understand.

6 BY MR. McLANDRICH:

7 **Q. Okay. Let's just do it a little differently**
8 **then. You tell me, what does it say?**

9 MR. GILBERT: Objection.

10 BY MR. McLANDRICH:

11 **Q. What's your understanding of what it says?**

12 MR. GILBERT: Objection. You can
13 answer if you know, but don't guess or speculate.

14 A. I'm not really sure what he's asking me. So I
15 mean --

16 BY MR. McLANDRICH:

17 **Q. I'm asking you what understanding do you reach**
18 **when you read those words?**

19 A. My understanding is what it says, "Principal's
20 permits are granted without custodial service during the
21 time that the permit is in effect." That's what it
22 says. I don't have an understanding outside of what it
23 says right there.

24 **Q. And the same is true for C, your understanding**
25 **is what it says?**

1 A. Yes.

2 **Q. All right. And how about 7.04 C, is your**
3 **understanding of that also what it says? Take time to**
4 **read it and then answer my question.**

5 MR. GILBERT: Objection. Don't guess
6 or speculate.

7 A. I don't understand that paragraph.

8 BY MR. McLANDRICH:

9 **Q. Okay.**

10 MR. GILBERT: What paragraph is that,
11 Mr. Garnett?

12 MR. McLANDRICH: 7.04 C.

13 A. Oh, I thought you meant A.

14 BY MR. McLANDRICH:

15 **Q. No. I'm talking about C.**

16 A. Okay.

17 MR. GILBERT: Again, I'll raise the
18 objection of interpreting the union contract.

19 A. Okay. What it says. Yeah.

20 BY MR. McLANDRICH:

21 **Q. Okay. Again, I'll just read it for the record**
22 **since Mr. Gilbert may not have it in front of him. 7.04**
23 **is "Business Affairs Office Permits." Subsection "C.**
24 **Areas use for Business Affairs Office permits shall be**
25 **cleaned pursuant to the assigned custodian's regularly**

1 posted schedule." Would you go to page 67 of the
2 Collective Bargaining Agreement, Exhibit I, please?

3 A. Got it.

4 Q. This section is entitled "Theft and Vandalism".
5 I can read the whole thing if you'd like, but let me
6 just start with the first paragraph and then I could
7 read some other portions, if you'd like.

8 "Theft and Vandalism. The Board agrees to
9 establish a Theft and Vandalism Fund in the amount of
10 \$2,000. This fund shall be maintained annually at the
11 beginning of each school year at the above-stated
12 amount.

13 Members may make application to the Theft and
14 Vandalism Fund for reimbursement of any personal
15 insurance deductibles resulting from claims submitted
16 for job-related theft and/or vandalism. Members may
17 also apply for reimbursement for any documented
18 job-related theft or vandalism that has been submitted
19 under an insurance policy and denied coverage under a
20 specific exclusion."

21 MR. McLANDRICH: I could read the
22 rest, if you'd like. I'll skip the third paragraph,
23 unless you want me to read it, Ed?

24 MR. GILBERT: I'm waiting on a
25 question.

1 MR. McLANDRICH: We'll get to that but
2 I'm just trying to put it in the record since you may
3 not have it in front of you.

4 BY MR. McLANDRICH:

5 **Q. Fourth paragraph "In addition to theft and**
6 **vandalism, the fund may be used to reimburse any**
7 **property loss suffered by a member resulting from**
8 **circumstances beyond the member's control. Questions**
9 **concerning the appropriateness of reimbursement under**
10 **these circumstances shall be decided by the MOT Concerns**
11 **Committee and the Office of Staff Relations."**

12 So my question is a very simply once, which is
13 **A, were you aware of the availability of this fund?**

14 A. No.

15 **Q. And then I take it, B, you've never been asked**
16 **to been reimbursed for your loss under this provision?**

17 A. No. What do you mean reimbursed?

18 **Q. Paid back. Compensated.**

19 MR. GILBERT: Mr. Garnett, you said
20 something and I didn't pick up what you said. What was
21 that?

22 A. I did ask to be reimbursed.

23 BY MR. McLANDRICH:

24 **Q. He asked the district to be reimbursed but not**
25 **specifically under this fund under the union contract,**

1 **correct?**

2 A. Yes.

3 **Q. Would you go to page 38 of the Collective**
4 **Bargaining Agreement, please?**

5 A. Got it.

6 **Q. So this section, why don't you take a chance to**
7 **read it a little bit and then I'll ask you a question.**

8 MR. GILBERT: What's the section
9 number?

10 MR. McLANDRICH: I'm sorry. 5.14
11 Absentee Replacement.

12 BY MR. McLANDRICH:

13 **Q. It's a very general question, so you could feel**
14 **free to read it, but my question is basically this**
15 **section talks about when a certain custodian or**
16 **assistant custodian is out of the workplace how they're**
17 **replacement is provided for, correct?**

18 MR. GILBERT: Go head and read it
19 thoroughly before you respond. Again, my objection is
20 noted in asking questions about this contract.

21 MR. McLANDRICH: Sure.

22 A. Okay.

23 BY MR. McLANDRICH:

24 **Q. So that section generally talks about how people**
25 **are filled in if the custodian is missing or an**

1 **assistant custodian is missing, that sort of thing,**
2 **correct?**

3 A. Yeah.

4 **Q. Would you go to page 23, please. Before I ask**
5 **you that, Mr. Garnett, did you feel like there was too**
6 **much work being placed on you and that the distribution**
7 **of work between you and your subordinates wasn't**
8 **appropriate?**

9 A. The workers that I had in the building weren't
10 doing their job. With better workers the job could have
11 gotten done.

12 **Q. All right. And as I understand it, were there**
13 **occasions -- did you do those workers reviews for them?**

14 A. Yes.

15 **Q. How would you do that?**

16 A. Sometimes -- well, most of the time when I
17 attend my stepdown with Tom Kekela, they'd end up being
18 thrown out.

19 **Q. I'm sorry.**

20 A. We had pool worker evaluation slips.

21 **Q. And how do you know they would be thrown out**
22 **when they were sent to Mr. Kekela?**

23 A. When Matt Frame took over the position he told
24 me that I had to redo some.

25 **Q. Did he say that's because they were missing or**

1 **thrown out?**

2 A. He said Kekela didn't do good paperwork or
3 something along those lines. He didn't have a paper
4 trail or something like that. So sometimes I would
5 e-mail just to make sure that they got it and there was
6 a record of it. Most of the time they actually went in
7 the pony.

8 MR. GILBERT: In what?

9 A. We'd fill out the paper and we would put it in
10 the pony, what we call the pony. A yellow envelope for
11 buildings and grounds. Someone would come by and pick
12 it up, grabbing everybody's pony.

13 MR. GILBERT: Inner office mail?

14 A. Yes.

15 MR. GILBERT: What section is page 23,
16 please?

17 MR. McLANDRICH: I decided not to ask
18 him about that.

19 MR. GILBERT: Okay.

20 BY MR. McLANDRICH:

21 **Q. When there were deficiencies cited in the**
22 **cleanliness of Crouse by Ms. Bruce or Mr. Frame or**
23 **Mr. Nash, are you contending that those cleanliness**
24 **issues didn't really exists?**

25 A. No. That was never an argument of mine.

1 **Q. So really the argument was that while these**
2 **cleanliness issues might exists it's because the other**
3 **custodians aren't, as you say, doing their jobs?**

4 A. Yes. That's part of it. The building would get
5 cleaned when I would come in in the morning because I
6 would have to do their work at night. I did my work, I
7 did the assistant's work that I didn't have, and also
8 did the pool worker's work.

9 **Q. Now did you feel that Mr. Ache did a good job of**
10 **cleaning?**

11 A. He did an excellent job and as a matter of fact,
12 once they put Mr. Ache in the building and took the
13 other two guys out, so Ache replaced two guys, the
14 principal never complained.

15 **Q. And was Mr. Ache in the building twice? Did he**
16 **come first as a pool worker and then come back later as**
17 **the assistant custodian?**

18 A. Yeah. I think he was a pool worker and then a
19 year later he was an assistant.

20 **Q. When he came back as an assistant were you**
21 **already gone on leave?**

22 A. Yes.

23 **Q. So your experience with him being an excellent**
24 **worker would have been while he was a pool worker?**

25 A. Yes.

1 **Q. Was he a five or an eight-hour at that time, do**
2 **you recall?**

3 A. He was eight. He was working eight hours.

4 **Q. And do you recall who the individuals were that**
5 **he replaced?**

6 A. Actually one of the guys was Mikal. Mikal was
7 somebody that I wanted to keep, and Thomas Hill I
8 believe it was.

9 **Q. And you were happy to see Thomas Hill go, right?**

10 A. Yes.

11 **Q. And so sounds like the switch of Ache for Mikal**
12 **and Hill was a positive thing?**

13 A. Yes. The principal really liked him.

14 **Q. Sounds like you liked him at least as a worker?**

15 A. I just wanted someone to come in and do what
16 they were supposed to.

17 **Q. And he did that?**

18 A. Yes. After I talked to him a few times. The
19 beginning was a little rocky, but once I spoke with him
20 everything was fine.

21 **Q. You showed him some supervision and he respond**
22 **to that?**

23 A. Yes.

24 **Q. When you were talking about the 2007 appointment**
25 **interview that you were supposed to have with Mr. Ferris**

1 **and your mother I believe had passed away?**

2 A. Right. I believe it was 2007.

3 **Q. Isn't my memory correct that you ended up having**
4 **to cancel that interview with him because of your**
5 **mother?**

6 A. My mother died on a Saturday, I called early
7 Monday and I asked Mr. Ferris, I said Mr. Ferris my
8 mother just passed away. Can I reschedule this
9 appointment for later on this week? He told me no. It
10 was already scheduled so I had to meet him.

11 **Q. So then you went ahead and met him?**

12 A. Yes.

13 **Q. Did you ever file any grievances through the**
14 **union?**

15 A. About that moment?

16 **Q. About anything in general.**

17 A. Yes. I believe I did. To my best knowledge I
18 believe I did.

19 **Q. Do you recall what it was?**

20 A. No.

21 **Q. When was the last time that you saw a noose at**
22 **Akron Public Schools?**

23 A. Probably a few months after it started.

24 MR. GILBERT: Say that again.

25 A. In '02.

1 BY MR. McLANDRICH:

2 Q. So whenever the incident in '02 started and
3 ended that was the only time that you were exposed to a
4 noose at Akron Public School?

5 A. You're just speaking on the noose. Yes. That
6 was the only time.

7 Q. And it's my understanding that from your OCRC
8 charge back in '02 that they also used the N word with
9 respect to you or around you?

10 A. Yes.

11 Q. Did you ever hear that word at Akron Public
12 Schools outside of the incident of 2002?

13 A. No.

14 Q. After you filed the police report concerning the
15 cutting the locks off your lockers did you ever have any
16 follow-up with the police?

17 A. I had plenty of follow-up for six months. It
18 was like pulling teeth.

19 Q. And by that do you mean that you would call them
20 but they wouldn't get back to you?

21 A. I would call them, ask them questions, how come
22 they can't get in touch with this guy. Something like
23 they didn't have his address and I told them that he
24 worked up at the school. Like they couldn't get in
25 touch with him.

1 Q. Okay. Earlier you were talking about Ms. Bruce
2 and you're saying that she would adopt this submissive
3 posture. Do you recall?

4 A. Yes.

5 Q. And I don't understand what that submissive
6 posture is and I'm hoping you'd describe it to me.

7 A. Yes. Yes. Let me help you. If you would have
8 been walking down the hall and you would have seen the
9 way that she was against the wall and you would have
10 seen us talking, maybe your eyebrows would have raised
11 saying I wonder what that conversation is about. Does
12 that make sense?

13 Q. Yeah.

14 A. Like she was at the club.

15 Q. Okay. And I get that as far as it goes, but
16 what I would like to understand is where are body parts?

17 A. Okay. Her shoulders are touching the wall,
18 maybe a left foot is out further to get the lean where
19 her back shoulders are touching the wall, and her right
20 leg is placed up against the wall and both hands are
21 behind her back. Does that give you a clear picture?

22 Q. That's great. I appreciate that. That's a good
23 description. So that was the position that she adopted
24 on the elevator?

25 A. Same one, yes.

1 **Q. Also in the bathroom?**

2 A. I didn't say she had that position in the
3 bathroom, but she was pretty close to me in the
4 bathroom.

5 **Q. I'm sorry. You said in the boiler room when she**
6 **was in the boiler room --**

7 A. In the -- I'm sorry. Finish your question.

8 **Q. That's okay. In my notes I wrote in the**
9 **elevator she had that submissive position, and then I**
10 **think you also said when you were in the boiler room or**
11 **out by the chiller area.**

12 A. Chiller area, yes.

13 **Q. Same posture?**

14 A. Yes.

15 **Q. So it's my understanding that there was a time,**
16 **I guess it would have been -- I could find the exact**
17 **date, but it would have been in 2017 when you got**
18 **slapped on the back of your head or neck by a student.**
19 **Do you remember that?**

20 A. Yes.

21 **Q. Was it 2017?**

22 A. Yes.

23 **Q. And do you recall telling the people at Portage**
24 **Path that in your mind you somehow you thought that that**
25 **might be related to the 2002 incident?**

1 A. Exactly.

2 Q. And what was it that made you think that the
3 student slapping you like that was related to the 2002
4 incident?

5 A. Well, after I got hit in the head all my
6 paranoia began to come back and I had got to the point
7 where -- that's it. All my paranoia resurfaced.

8 Q. Okay. So I'm not looking to put words in your
9 mouth but I am looking to understand. When you say
10 "paranoia," what that suggests to me is that
11 intellectually you realize that the fear that the
12 student slapped you because of the 2002 incident isn't
13 intellectually valid, but in your emotional side you
14 have that certainty. Am I hearing you right?

15 A. I'm sorry.

16 MR. GILBERT: Finish your answer.

17 A. When it comes to Portage Path, when you made
18 that statement, I don't know if I said that to her or
19 not. I don't actually remember saying that. I'm not
20 saying that I didn't say it, but I don't remember saying
21 that.

22 BY MR. McLANDRICH:

23 Q. I can get out the report. I wouldn't have just
24 made that up.

25 A. If anything I would have said that after that

1 hit in the head things started resurfacing again to
2 where at that time I became in fear for my life again.
3 That's related to the hangman noose situation.

4 **Q. And that extended to being in fear of the**
5 **students at the school, correct?**

6 A. I began to -- there was a situation that I was
7 uncomfortable with a student that didn't mean me any
8 harm, but they raised a hand up to give me a high five
9 and I actually put myself in a blocked position because
10 I thought they were trying to hit me.

11 **Q. And so you did have then some fear of the**
12 **students being potentially assaultive toward you?**

13 A. I began to be uncomfortable.

14 **Q. And you relate that back to your concerns of**
15 **2002 coming back to you?**

16 A. Well, there were other things that were
17 happening to the building that started coming back up,
18 yes.

19 **Q. I'm talking about the students.**

20 MR. GILBERT: Objection. Do you
21 understand the question?

22 A. Ask it again.

23 BY MR. McLANDRICH:

24 **Q. Sure. You started to have a fear of being**
25 **around the students because of being slapped on the back**

1 **of the neck. Is that true?**

2 A. I was uncomfortable. There was one incident to
3 where somebody went to give me a high five and it was a
4 little girl. I was standing at the lunch table and when
5 she went to give me a high five I put my hands up
6 because I thought she was going to hit me.

7 **Q. And Crouse is an elementary school, right?**

8 MR. GILBERT: I'm not sure if he
9 answered your question. That was different from the
10 other slap on the head, or is that the same incident?

11 A. This is different.

12 MR. McLANDRICH: I think he was trying
13 to give this an as example of being concerned about the
14 students in reaction to being slapped.

15 MR. GILBERT: I just want to make it
16 clear that the slap on the head was not a girl giving
17 him a high five.

18 MR. McLANDRICH: I understood that.

19 MR. GILBERT: That's correct,
20 Mr. Garnett?

21 A. Okay. If you're saying fear of the students as
22 far as working around them, is that what you're asking
23 me?

24 BY MR. McLANDRICH:

25 **Q. I'm asking if you started to have concerns about**

1 **being around the students as a result of being slapped**
2 **on the back of the head and you gave me that example.**

3 A. I'm answering your questions the best I can.
4 When you asked me a situation and you're talking about
5 Portage Path, that was a situation where I told her
6 that, you know, somebody went to give me a high five and
7 I threw my hands up in front of my face as if I thought
8 they were going to hit me. We're talking about one
9 incident. I just looked at that one incident and
10 thought, wow, if I wasn't slapped on the head maybe I
11 wouldn't be on the defense with a little girl trying to
12 block myself.

13 **Q. I appreciate that. Did you also find your PTSD**
14 **growing worse after being slapped on the back of the**
15 **neck?**

16 A. Actually, yes. I didn't even know that I had
17 that PTSD. That's how it was explain to me. I just
18 explained to the doctor what I was going through and
19 experiencing, that's what they diagnosed me with. If
20 you're asking after the slap in the head, did my
21 paranoia get worse?

22 **Q. Sure.**

23 A. Yes. Yes. And there was reasons for that too.
24 There were things happening.

25 **Q. What does that mean, sir?**

1 A. Well, when I started coming to my building, and
2 this is me feeling the whole time that I'm being set up
3 for whatever, back in '02 I was in fear for my life so I
4 began being in fear for my life again. What I mean is
5 when I would come to work sometimes my building is wide
6 open, no alarm on it. So I'm like who did that? Why am
7 I coming into my receiving door? There's a button in
8 the office that if it's left down the receiving door is
9 wide open, and there's no alarm on it. So I'm like
10 who's in here waiting for me, setting me up.

11 One time the doors were wide open and the lights
12 were out. We had automatic lights and the lights come
13 on at a certain time. As I'm going through my building
14 I walk up the stairs and there's a white guy that comes
15 around the building with a gun on his hip. Now I don't
16 know who this guy is, but he stopped all the sudden and
17 I'm looking at him and he's look at me. Come to find
18 out it was security for the building. They were saying
19 that an alarm went off, but when I came up to the
20 building there was no alarm. That added to my paranoia.
21 Why is this guy walking through the building with a gun
22 on his hip? He did work for the Board of Education, but
23 there was no alarm on when I came into my building, so
24 I'm thinking now I'm going to be an accident.

25 I believe he was a regular worker for the Board

1 of Education, but did maybe part-time security. I
2 called Matt Frame on that and I explained to him there
3 was a guy in the building with a gun and my alarm wasn't
4 going off like he said it was when I came up to the
5 building.

6 **Q. Anything else about that?**

7 A. No. That's it. About my paranoia?

8 **Q. No. About that incident.**

9 A. Okay.

10 MR. GILBERT: Are you done with that?

11 A. If we were talking about paranoia where it got
12 worse, I have other examples.

13 BY MR. McLANDRICH:

14 **Q. Go ahead and give me the other examples.**

15 A. I used to feel real bad -- I'm trying not to get
16 emotional. I used to feel bad because I never told my
17 wife I was afraid to go to work. So what I would do, I
18 would get up -- because we had before school care, I
19 would get there at 6:30 in the morning, so it's still
20 dark and because I stayed so close to the building, two
21 blocks, I would have my wife come downstairs and I would
22 have her look out the window. I said just watch me walk
23 to the first block. When I would get to the school, and
24 after seeing that guy in the building with the gun,
25 sometimes I would just sit out on the bench just to get

1 up enough courage to go into the building. It was as if
2 I had to accept -- in order for me to go to work because
3 I worked through lot of things I had to accept in my
4 mind my death in order to go to work.

5 **Q. Is that going back to the 2002 incident or is**
6 **this because you saw the man with the gun?**

7 A. Yes. It all stems from '02. If I never had the
8 '02 incident where I feared with my life, maybe if I saw
9 the guy with the gun and he told me he was security it
10 may have been something I could have let go at that
11 time.

12 **Q. It sounds like seeing the guy with the gun**
13 **instead of making you feel more safe, it made you feel**
14 **less safe?**

15 A. I was feeling unsafe even before him.

16 **Q. I get that, but it sounds like seeing him made**
17 **you feel less safe and not more safe?**

18 A. Yes. Having my building wide open when I
19 entered knowing how people felt about me.

20 **Q. And was having your wife watch you walk part of**
21 **the way to work partly because of the neighborhood or**
22 **because of the school?**

23 A. I wasn't afraid of the neighborhood although
24 there was a lot of things that happened in the
25 neighborhood, but that's some things that I grew up

1 around. The neighborhood had its issues, and like I
2 said, it wasn't a popular place for custodians to live,
3 but I was willing to work anywhere and get any school as
4 far away from my experience in '02.

5 **Q. The only reason I ask that is because you said**
6 **that you would have her watch you walk the first block**
7 **and that seems to me that has more to do with the**
8 **neighborhood than the school, but you tell me.**

9 A. No. As a matter of fact, Trevor Schrom tried to
10 come in early in the morning. I told him I don't want
11 nobody in this building before I get here. I didn't
12 know what these guys had in store for me.

13 MR. GILBERT: What guys?

14 A. It wasn't the neighborhood. I'm talking about
15 Tom Kekela, John Beverlin or Matt Frame. I walk my dog
16 in my neighborhood at 1:00 in the morning, 2:00 in the
17 morning. For some reason walking by dog and going to
18 the school was totally different for me.

19 MR. GILBERT: Wait for a question.

20 A. Okay.

21 BY MR. McLANDRICH:

22 **Q. Other than the 2002 incident have you had any**
23 **other litigation with Akron Public Schools?**

24 A. You mean filing charges?

25 **Q. I'm talking about actual lawsuits.**

1 A. No.

2 **Q. After you were hit in the back of the neck by**
3 **the student you went out on a Workers' Comp claim,**
4 **correct?**

5 A. At some point. I don't know if I went out on a
6 Workers' Comp. I know I have something to do with
7 Workers' Comp. I have a Workers' Compensation claim.

8 **Q. You don't recall whether you missed time from**
9 **work because of that incident?**

10 A. I think it was due to -- yes. I did miss some
11 time.

12 **Q. And after that incident you had continuing**
13 **problems with your neck from that, which apparently you**
14 **still go to the chiropractor for, right?**

15 A. I want to still go to the chiropractor. It's an
16 argument whether or not I can -- I think they had some
17 kind of a meeting to see if I could continue treatment.
18 But yes, I still have problems with my neck if that's
19 what you're asking me.

20 **Q. So when did you first start to consider**
21 **disability retirement?**

22 A. I probably started thinking about it -- I know
23 the PTSD was getting bad, but when I couldn't bid on
24 buildings and found out I couldn't get out of Crouse or
25 leave that situation I thought about possibly getting

1 the ball rolling as far as disability. I never wanted
2 to retire.

3 **Q. So the unfavorable job review was some time**
4 **after June of 2017, right?**

5 A. Yes.

6 MR. GILBERT: John, can I take a quick
7 break to run to the restroom?

8 MR. McLANDRICH: That's fine.

9 - - - -

10 (Thereupon, an off-the-record discussion was held.)

11 - - - -

12 MR. McLANDRICH: Back on.

13 BY MR. McLANDRICH:

14 **Q. Mr. Garnett, would you turn to Exhibit B,**
15 **please?**

16 MR. GILBERT: B as in boy?

17 MR. McLANDRICH: Yes. The
18 interrogatory responses.

19 - - - -

20 (Thereupon, Defendants' Exhibit B was marked for
21 identification.)

22 - - - -

23 A. I'm sorry. Exhibit what now?

24 BY MR. McLANDRICH:

25 **Q. B.**

1 A. Okay. Got it.

2 **Q. Okay. So interrogatory number one asks about**
3 **acts of retaliation that were taken against you for your**
4 **protected conduct, which is filing your OCRC charges or**
5 **complaining about discrimination or any of that. I want**
6 **to know what acts of retaliation you suffered.**

7 A. Nitpicking.

8 **Q. What does that mean?**

9 A. That means at one point the principal actually
10 put the assistant principal on me and it got to a point
11 where she started nitpicking my work like a spot on the
12 stage.

13 **Q. Is this the sticky cupcake thing?**

14 A. Yes. Yes. That incident. There's another
15 incident that's in their paperwork with one of the
16 walkthroughs that they did where somebody found a strand
17 of hair under an iron fixture in the corner of the
18 bathroom. That was part of it.

19 **Q. Were you reprimanded for that in any fashion?**

20 A. Well, it was a paper trail on me, which that was
21 another part of the retaliation, beginning a paper
22 trail.

23 **Q. Is that sort of like recording conversations of**
24 **people, keeping a paper trail?**

25 A. No. It's not the same thing.

1 **Q. How is it not?**

2 A. It's not the same thing because it's the intent.
3 My intent for recording was to protect myself. These
4 guys by starting a paper trail were out to get me.

5 **Q. Or at least that's your interpretation of it?**

6 A. Yeah. I'm not out to get anyone. I'm just
7 trying to get the building clean and work.

8 **Q. Okay. What other acts of retaliation?**

9 A. There was, of course, the downgrade. I don't
10 even think she should have been allowed to downgrade me
11 because of all her comments. We talked about comments
12 of black and white in 2016 but we never moved to 2017.
13 This stuff was still going on up until the time that I
14 left in 2017.

15 **Q. What does that mean?**

16 A. Well, trying to get Thomas Frame out of the
17 building, she said I wasn't the right custodian for him,
18 that he needed a white custodian. Thomas Hill did --
19 that he would react better to a white custodian.

20 **Q. Did she say something about the different style**
21 **of discipline? In your recording she said a stronger**
22 **style of discipline.**

23 A. I didn't record everything that was said. She
24 said one thing in a meeting --

25 MR. GILBERT: Who is the she you're

1 referring to?

2 A. Tara Bruce. Tara Bruce said a lot of things in
3 the meeting. There are tapes that you had that she said
4 things, but there are other things that are not on tape.

5 BY MR. McLANDRICH:

6 **Q. Now you're claiming that she said Thomas Hill**
7 **needed to be supervised by a white custodian?**

8 A. I'm not claiming. That's exactly what happened.

9 **Q. Okay. What else?**

10 MR. GILBERT: When was that, though?

11 A. During the time that I was trying to get him out
12 of the building, March, April. Somewhere around that
13 time.

14 BY MR. McLANDRICH:

15 **Q. What year?**

16 A. 2017. But this stuff continued until the time
17 that I left.

18 **Q. What's this stuff?**

19 A. Black custodians, white things. She would say
20 -- when I came back, because I was taking time off and
21 this Matt Bueser guy was replacing me, she told me that
22 she wanted him to be the head custodian. She walked
23 away from me one time almost with a smile and I didn't
24 think it was funny, but she said she was going to
25 replace me with a white custodian. This was the end of

1 2017.

2 MR. GILBERT: This is Bruce you're
3 talking about?

4 A. Yes. This is why the recording were started.
5 There were things like this being said all the time.

6 BY MR. McLANDRICH:

7 **Q. What else?**

8 A. That and the retaliation, how she felt with me
9 and black custodians I felt like that retaliation was
10 coming from -- she shouldn't really even have been the
11 one that gave me my grade. There was retaliation by me
12 not having support when I asked for support or me being
13 the head custodian. If I asked for the people's
14 schedules to be staggered rather than bring them in at
15 the same time, they wouldn't do it. They wouldn't
16 reprimand the pool workers. They were throwing away my
17 evals on them, the pool workers. Tom Kekela wasn't
18 keeping that. There was something else that popped in
19 my head and I forgot. Hold on a second.

20 **Q. What are you reading from, Mr. Garnett?**

21 A. Notes that I wrote down. Sometimes my memory --
22 do you want to see it?

23 **Q. Sure. Hold it up to the camera.**

24 MR. GILBERT: I have not seen that,
25 but you're referring to it? Okay. Counsel, you're

1 entitled to see it.

2 MR. McLANDRICH: It's certainly
3 covered by request of production of documents number
4 two.

5 MR. GILBERT: I'm not arguing with
6 you. I'm just saying whatever he's referring to, I've
7 not seen it.

8 MR. McLANDRICH: Oh, okay. I'm sorry
9 about that.

10 MR. GILBERT: Whatever it is,
11 Mr. Garnett, you're going to have to produce it now. I
12 don't know what it is.

13 MR. McLANDRICH: Hold it up to the
14 screen a little longer so I could read what it says on
15 there.

16 MR. GILBERT: I'm going to object to
17 that. I think I'm going to need to see it before he
18 does that, but I agree. I think your entitled to it but
19 for privilege. Mr. Garnett, do you have the ability to
20 fax that or e-mail that to my office now?

21 A. Yeah. No, I don't.

22 MR. GILBERT: Okay. I want you to
23 stop referring to it right now. Okay? Stop reading it
24 and I'm going to need to see that at some point and get
25 it to Mr. McLandrich as well. You're not supposed be

1 referring to a document that your counsel has not seen
2 during the course of a deposition.

3 A. Oh, okay. That's the first time that I picked
4 that up.

5 BY MR. McLANDRICH:

6 **Q. Do you have notes other than that page that**
7 **you're looking at?**

8 A. I probably have the same things that you have,
9 what you gave me. What you gave me is what I have been
10 looking back and forth at.

11 **Q. Okay. So other than that one page, you don't**
12 **have any other notes?**

13 A. No.

14 **Q. So any other acts of retaliation that you**
15 **haven't told me about?**

16 A. I'd have to go through it again. I probably
17 missed something. Like I said, not being supported,
18 pool workers not being taken out of the building.
19 Actually, let me see.

20 MR. GILBERT: Just say whatever you
21 can remember at the present time. If that's all you can
22 remember, that's okay.

23 A. Okay.

24 BY MR. McLANDRICH:

25 **Q. Do you claim you have a disability?**

1 A. Do I claim I have a disability?

2 **Q. Yes.**

3 A. The only thing that I can say to that is I'm on
4 disability.

5 **Q. Okay. Prior to going on disability did you ever**
6 **claim a disability to the district?**

7 A. What do you mean?

8 **Q. Sure. Did you ever tell them I can't perform my**
9 **job or I need some assistance in performing my job**
10 **because I'm physically unable to do this, mentally**
11 **unable to do that?**

12 MR. GILBERT: Are you asking about
13 accommodations?

14 MR. McLANDRICH: Yeah.

15 A. Yes.

16 BY MR. McLANDRICH:

17 **Q. What did you ask for? What accomodation did you**
18 **ask for?**

19 A. Well, you should have that paperwork. When I
20 went to Cleveland Clinic and they diagnosed me with PTSD
21 they had some kind of accommodations on that and I do
22 believe that Portage Path Behavioral Health had some
23 accommodations with being able to work three days and
24 having some time off. I'd have to find that document.
25 Also one accomodation I made was to Matt Frame on

1 8-31-18.

2 **Q. What are you referring to?**

3 A. I told him I would like a transfer.

4 **Q. And you were on leave on 8-31-18, correct?**

5 A. Yes.

6 **Q. And you had your application for disability**
7 **benefit already pending, correct?**

8 A. Yes. But I would have pulled that in a
9 heartbeat.

10 **Q. And you never came back to work, correct?**

11 A. They never got back in touch with me, no.

12 **Q. You never came back to work, correct?**

13 A. Todd Wammes told me not to come back on the
14 premises.

15 **Q. Wait a minute. You proceeded with your**
16 **disability application, you received the disability**
17 **benefit and you never returned to work thereafter,**
18 **correct?**

19 MR. GILBERT: Objection. That's not
20 the way it went, counsel.

21 MR. McLANDRICH: Well, that's your
22 testimony. Let's hear his.

23 A. Okay. Can I explain? On 8-31 I was told to
24 turn into my keys, clean out my lockers and after all
25 that finding out that my stuff was stolen I had a

1 conversation with Matt Frame and told him I would like
2 to transfer out of this building. After that I never
3 got a call. This was August the 31st, so by time that
4 November came up, and it takes a while to get
5 disability, maybe a number of six to seven months, so it
6 was already in play. When they never got back in touch
7 with me and then they come and they said the disability,
8 November the 15th I believe, that's when I felt I wasn't
9 coming back. I felt that I was fired on 8-31-18.

10 BY MR. McLANDRICH:

11 **Q. Did you ever get a document saying that you were**
12 **fired?**

13 A. No. But to be followed out of the building,
14 usually when somebody follows you around to collect your
15 things, collects your keys and told not to come to the
16 premise again, usually that means you're pretty much
17 fired. I didn't know for sure. That's why I told Matt
18 Frame I would like to transfer.

19 **Q. And I assume under the union contract there's**
20 **mechanisms for transfers, right?**

21 A. They raised my score which made me available for
22 a transfer. If they didn't transfer me, I had no
23 building to go to. I wasn't at Crouse any more to my
24 knowledge.

25 **Q. So after you received the disability retirement**

1 **did you ever have a reevaluation of your disability?**

2 A. I'm not sure. I can't answer that. A
3 reevaluation? No. I'm not sure.

4 **Q. Okay. You've never received a finding that your**
5 **conditions for which you were deemed disability are such**
6 **that you're now no longer deemed disabled, have you?**

7 A. I was told that when I got the disability it
8 wasn't that I couldn't work. It was never that I
9 couldn't work.

10 **Q. Okay. Let's go to is Exhibit J, please?**

11 A. Okay.

12 - - - -

13 (Thereupon, Defendants' Exhibit J was marked for
14 identification.)

15 - - - -

16 BY MR. McLANDRICH:

17 **Q. So if you would scroll back 12 pages and you'll**
18 **see a letter from The School Employees Retirement System**
19 **dated December 4th, 2018.**

20 A. Yes, sir.

21 **Q. Do you see that?**

22 A. What's the date?

23 **Q. December 4th, 2018?**

24 A. Yes.

25 **Q. I'm just going to read the last paragraph of**

1 that letter into the record and then ask you about it.
2 "Please be advised that while you are receiving a
3 disability benefit you are prohibited from seeking
4 employment with any school system in any capacity. If
5 you're receiving a disability benefit on a combined
6 basis with the Ohio Public Employees Retirement System,
7 you also are prohibited from seeking employment with any
8 public employer in the state of Ohio."

9 And so this letter, the first sentence advises
10 you as long as you're receiving that disability benefit
11 you can't seek employment with any school, right?

12 A. Right.

13 Q. So you were told that you couldn't work for a
14 school while you received disability benefit, correct?

15 A. That wasn't my point. My point was from August
16 to November nobody got in touch with me and it didn't
17 have to go to the disability. I would have pulled that
18 out and told them no in a minute.

19 Q. Okay. Well, without them telling you anything
20 you could have pulled it out, right?

21 A. Right. But I didn't have a job. I didn't have
22 a school to go to.

23 Q. You were still at Crouse?

24 A. I really don't think that I was. I was told not
25 to come on the premises again.

1 Q. Okay. Go to the next page, please. School
2 Employment Retirement System of Ohio dated November 1,
3 2018. It should be the very next page.

4 A. Yes.

5 Q. Do you see the second paragraph it says "You
6 will be scheduled for reevaluation in approximately one
7 year." Do you see that?

8 A. Yes.

9 Q. Did you have that reevaluation?

10 A. I don't know if I did or didn't. Let me think
11 for a second. Now that reevaluation, if that means
12 they're continuing to pay me disability, then yes.

13 Q. No. That's not what it means, but let me see if
14 I can try to work through it with you.

15 MR. GILBERT: I'm going to object.

16 MR. McLANDRICH: Okay. That's fine.

17 MR. GILBERT: Say what it means to
18 you, Mr. Garnett. Don't try to be a doctor or anything
19 like that, just say what you think or just answer the
20 question, but don't try to give an opinion. Okay?

21 A. Okay.

22 BY MR. McLANDRICH:

23 Q. So after you received your disability benefit
24 did SERS ever send you to another doctor?

25 A. I can't answer that.

1 **Q. Because you don't know?**

2 **A. Right. I've seen a lot of doctors.**

3 **Q. I understand that. As we sit here you've not**
4 **gotten any documents that you're aware of from SERS that**
5 **tells you that you're no longer disabled and you can**
6 **return to work, is that correct?**

7 **A. I never got any paperwork saying that I couldn't**
8 **work.**

9 **Q. Answer my question if you don't mind, though.**
10 **Do you ever recall receiving any documents from SERS**
11 **telling you that you were no longer disabled and free to**
12 **return to work?**

13 **A. I'm trying to answer your question. I'm not**
14 **trying to smart or disrespectful. But the only way I**
15 **can answer that, why would I get a piece of paper saying**
16 **that I can work or I'm not longer disabled when I was**
17 **never told that I couldn't work.**

18 **Q. If we go back to the previous page of Exhibit J**
19 **we already agreed that it says you're prohibited from**
20 **working as long as you're receiving the disability**
21 **benefit, correct?**

22 **A. For Akron Public School.**

23 **Q. And you continued to receive the disability**
24 **benefit, correct?**

25 MR. GILBERT: Objection.

1 BY MR. McLANDRICH:

2 **Q. Do you condition to receive a disability**
3 **benefit?**

4 A. I think I know what you're asking me and what
5 you're saying, but I had answered that already when I
6 said it didn't have to get to this point. From August
7 to November I didn't have a job.

8 **Q. I appreciate that, but just answer my question**
9 **if you don't mind. You continued to receive a**
10 **disability --**

11 MR. GILBERT: Counsel, he can work for
12 a private concern. There's nothing here that -- you've
13 got to clear that question up. There's nothing here
14 that prevents him from working for a private employer.

15 MR. McLANDRICH: I never suggested
16 that there is. He can go work for anyone he wants other
17 than a school system in the state of Ohio.

18 MR. GILBERT: And that's what he's
19 telling you.

20 MR. McLANDRICH: He's not telling me
21 that at all. Thank you for interpreting the testimony.

22 MR. GILBERT: He just said it.

23 BY MR. McLANDRICH:

24 **Q. Mr. Garnett, yes or no, do you continue to**
25 **receive a disability benefit from SERS?**

1 A. Yes, I do.

2 **Q. Let's go back to Exhibit B, Mr. Garnett.**

3 A. Okay. I got it. Wait a minute. I'm pushing on
4 it but it's not opening up. Wait a minute.

5 MR. GILBERT: Counsel, perhaps you can
6 read the question and response.

7 MR. McLANDRICH: Don't worry about it.
8 We'll move on.

9 BY MR. McLANDRICH:

10 **Q. Mr. Garnett, do you know whether the union**
11 **contract has a provision that speaks to transfers?**

12 A. Possibly. I'm pretty sure it does.

13 **Q. And so if it does then that provision would**
14 **control the terms and circumstances under which a**
15 **transfer would occur, correct?**

16 MR. GILBERT: Objection. Don't
17 speculate or guess on that.

18 A. I don't know.

19 MR. McLANDRICH: These continuing
20 instruction are highly improper.

21 MR. GILBERT: I disagree. You ask him
22 questions that -- he doesn't know anything about the
23 contract. If he does he can say it.

24 MR. McLANDRICH: He doesn't need you
25 to constantly remind him. It's highly improper.

1 MR. GILBERT: He's not required to
2 answer questions that he's not familiar with.

3 MR. McLANDRICH: You need to read the
4 local rule on depositions again, Ed, and I'm losing my
5 patience.

6 MR. GILBERT: I just lost my patience
7 because I think you're being unfair about that.

8 MR. McLANDRICH: Okay.

9 A. To be honest with you --

10 MR. GILBERT: Wait on a question.

11 A. Okay.

12 BY MR. McLANDRICH:

13 **Q. Did you request the SERS folks to give you a**
14 **reevaluation? Did you ever request one?**

15 A. My wife was -- I was in such bad shape my wife
16 was taking care of all the paperwork at that time. I
17 can't answer that.

18 **Q. I'm talking about since they awarded you a**
19 **disability benefit.**

20 A. I can't answer that.

21 MR. GILBERT: You mean that you don't
22 know?

23 A. Yeah. I don't know. Sorry.

24 MR. McLANDRICH: I should just take
25 your deposition.

1 MR. GILBERT: We're answering the
2 questions, counsel.

3 BY MR. McLANDRICH:

4 **Q. Tell me about any statements that anyone made to**
5 **you that suggests that you were being discriminated**
6 **against based on your age?**

7 A. I was constantly been told that I was slow.

8 **Q. By who?**

9 A. Tara Bruce.

10 **Q. Okay. To you that translated to age?**

11 A. Yes.

12 **Q. All right. Go ahead. Anything else?**

13 A. Constantly asking me how old I am.

14 **Q. Who did?**

15 A. Tara Bruce.

16 **Q. What else?**

17 A. Constantly tell me that she would work circles
18 around me.

19 **Q. Anything else?**

20 A. She said that younger white custodians work
21 faster and better.

22 **Q. Are those the words that she used?**

23 A. Yes.

24 **Q. Anything else she said?**

25 A. Let me think. Those were the things that

1 happened all the time. As far as what I can remember at
2 this point.

3 **Q. That's all you can testify to.**

4 A. I'm trying to think. I'm trying to remember.
5 That's as far as I can remember right now.

6 **Q. Any comments by anyone else about your age?**

7 A. Matt Frame asked me how old I was one time.

8 **Q. Anything else by Matt Frame?**

9 A. As far as age, that was it.

10 **Q. What was the context in which he asked you how**
11 **old you were?**

12 A. He just came out and asked me like Ms. Bruce
13 did.

14 **Q. No other conversation that you recall before or**
15 **after that specific question?**

16 A. It was just like Ms. Bruce used to do right out
17 of the clear blue sky. How old are you, Mr. Garnett?

18 **Q. Okay. Anybody ever make any statements to you**
19 **about your disability?**

20 A. Me and Matt Frame talked about PTSD.

21 **Q. Okay. Other than that?**

22 A. Not that I can recall, no.

23 **Q. Has your physical condition improved or gotten**
24 **worse since you left the school on August 31st, 2018?**

25 A. Probably a little worse but pretty close to back

1 to where I was. I'm close.

2 **Q. Which conditions in your view have gotten worse?**

3 A. After I got hit in the back of the head my eyes,
4 that's when I started really struggling with my eyes.
5 My eyes are a little worse. Other than that, that's
6 pretty much it. I might get a little more winded than I
7 used to, but it's not a big deal.

8 **Q. How long does it take when you have to go for**
9 **dialysis when you go -- is it three times a week?**

10 A. Yes. Three times a week.

11 **Q. What days do you go?**

12 A. Monday, Wednesday and Friday.

13 **Q. How long does that take?**

14 A. Three hours and 15 minutes and they got --
15 sorry.

16 **Q. Have they told you how long you could remain on**
17 **dialysis?**

18 A. No. They didn't tell me how long.

19 **Q. Do you have any facts to cite to me to support a**
20 **claim that Matt Frame and Tara Bruce conspired regarding**
21 **this reduced evaluation?**

22 A. Say that again.

23 **Q. Sure. Do you have any facts to support the**
24 **claim that Matt Frame and Tara Bruce conspired to give**
25 **you a poor evaluation?**

1 A. Sure. By not replacing the people that weren't
2 doing their job. If they would have replaced the people
3 with someone who was doing their job -- they were
4 actually holding what other people did against me.

5 **Q. Anything beyond that?**

6 A. I know Matt Frame came through and did I believe
7 sometime in March a big building inspection, which ended
8 up in my eval meeting, so it was beginning a paper trail
9 with walkthroughs, building checks and different things
10 like that. But, again, I would say there was no reason
11 for me to be downgraded because I've never been written
12 up or had a verbal warning.

13 **Q. And when you say that the walkthrough ended up**
14 **in your eval, what does that mean?**

15 A. What Matt Frame -- it wasn't in the meeting at
16 first. There was nothing really in the meeting at first
17 in that first downgrade evaluation except four
18 paragraphs. That Matt Frame building check that he did
19 in March came later. Thank you for reminding me. That
20 came later after the evaluation was all over and after I
21 talked to John Beverlin and said, hey, she can't
22 downgrade me because I've never had a verbal or written
23 warning. That's when Matt Frame's paperwork popped up
24 and other things started to pop up.

25 **Q. So you've never a received a verbal warning or**

1 **written warning?**

2 A. Yes.

3 **Q. Yes, you've never received one?**

4 A. I've never received a verbal or written warning.

5 **Q. Okay. And the walkthrough didn't result in any**
6 **sort of disciplinary action against you, correct?**

7 A. It was starting a paper trail.

8 **Q. And it never resulted in any disciplinary action**
9 **against you, correct?**

10 A. No. No.

11 **Q. Are you contending that your building is the**
12 **only one that's ever had a walkthrough?**

13 A. No. Again, we have to speak of the intent of a
14 thing. The intent was totally different.

15 **Q. How do you know that?**

16 A. It was to set me up.

17 **Q. How do you know that?**

18 A. That I know because all of a sudden, as a matter
19 of fact, when Matt Frame came out to the building my
20 understanding of what was told to me was that he was
21 going to show them how to do it or something along those
22 lines with a paper trail. He started the paper trail
23 and Ms. Bruce started the paper trail.

24 **Q. I'm sorry. Tell me what Frame said?**

25 A. It was hearsay that he was going to show how

1 this is done and that came from all the things that he
2 wrote down on that building check, all the pictures that
3 was taken on that building check and he also came out to
4 the building at the time that the building should still
5 have had people working, but there was nobody working at
6 that time.

7 **Q. And what is this, when you say how this is done?**

8 A. Well, I guess a paper trail to get me demoted or
9 fired.

10 **Q. So when you say show how this is done, show how**
11 **to get you demoted or fired. Is that what you're**
12 **saying?**

13 A. Exactly.

14 **Q. When you say this is hearsay who did you hear**
15 **this from?**

16 A. The pool workers who were there.

17 **Q. What do you mean? I thought you said no one was**
18 **there during the walkthrough?**

19 A. I guess they came back and talked to Matt Frame.

20 **Q. Which pool workers are we talking about?**

21 A. Like I said, I don't know which pool worker it
22 was but Matt Frame said he was in the building by
23 himself but I don't know how they heard it.

24 **Q. What pool workers did you hear it from?**

25 A. The same pool workers that Matt Frame -- it

1 would have had to have been from Thomas Hill because at
2 the same time Matt Frame would pat them on the shoulders
3 even though the building was a mess saying they were
4 doing a good job. That would have been Thomas Hill.

5 **Q. Do you have a specific memory that it was Thomas**
6 **Hill that told you this?**

7 A. Yes.

8 **Q. What else did Matt Frame do, if anything?**

9 A. He came through the building taking pictures.
10 He put that in my file after I explained to John
11 Beverlin what the principal couldn't do, so he started
12 padding my files.

13 **Q. Isn't that Matt Frame's job to do a walkthrough**
14 **when he's asked?**

15 A. We're talking about my files being padded.

16 **Q. You're talking about the walkthrough being put**
17 **in your file?**

18 A. Exactly. But it wasn't part of the evaluation.
19 Like I said earlier, when I had the evaluation the only
20 thing that I had on that evaluation was four paragraphs.
21 I called John Beverlin, told him the situation and how I
22 felt that I never had a verbal or written warning and
23 then all of a sudden that popped up. That's different
24 from a walkthrough than all of a sudden paperwork
25 popping up to try to justify something.

1 **Q. Anything else for Matt Frame?**

2 A. I just remember me and him having a conversation
3 in the office about the hangman noose situation and he
4 didn't seem to happy about that. That was in 2017.

5 **Q. And that you took from the look on his face?**

6 A. Well, that was from no response. We've had
7 other conversations about that, but at this time it was
8 a little different.

9 **Q. What does that mean?**

10 A. Like I said, it was more cold, distant. Can I
11 back up with one statement?

12 MR. GILBERT: You have to correct or
13 add to something?

14 A. Yeah. I wanted to correct something. When it
15 comes to where I heard that from it could have been
16 Thomas Hill or it could have been from Donnelle McNary.
17 I apologize for pointing that situation out to just one
18 person because I really wasn't sure and I'm still not
19 absolutely sure.

20 BY MR. McLANDRICH:

21 **Q. But Donnelle was not a pool worker?**

22 A. No. Donnelle was an eight-hour custodial
23 worker.

24 **Q. So it wasn't necessarily a pool worker you heard**
25 **it from?**

1 A. It could have been a pool worker, or it could
2 have been Donnelle McNary. I can't remember. I just
3 remember what was said.

4 **Q. So prior to the time that you had left the**
5 **building in August of 2018 there was no physical**
6 **conditions or mental conditions that prohibited you from**
7 **being able to do your job, right?**

8 MR. GILBERT: Could you say that
9 question again, please?

10 BY MR. McLANDRICH:

11 **Q. Sure. Prior to the time that you left the**
12 **building in August of 2018 there was no physical or**
13 **mental conditions that you had that prevented you from**
14 **being able to do your job?**

15 A. No, there wasn't. If I could have been
16 transferred to another building I could have started in
17 September.

18 **Q. And the only thing in your mind that gave you a**
19 **problem of doing your job was the fact that the pool**
20 **workers that you got weren't working properly?**

21 MR. GILBERT: Objection.

22 A. Say it again.

23 BY MR. McLANDRICH:

24 **Q. Sure. The only problem that you had in**
25 **performing the actual tasks of your job was that you**

1 **felt that the pool workers that you had didn't do their**
2 **jobs properly?**

3 A. When you're saying my job, are you talking about
4 what I did as a custodian from seven to three.

5 **Q. Let me ask it over to clear up any confusion.**
6 **With respect to the performance of the custodial**
7 **services in the building and your responsibility to make**
8 **sure that the building was clean, the only thing that**
9 **prevented you from having a clean building was that your**
10 **subordinate custodians didn't do a good enough job?**

11 A. Absolutely not.

12 MR. GILBERT: Objection.

13 A. It was a combination of Matt Frame and Tara
14 Bruce.

15 BY MR. McLANDRICH:

16 **Q. And what did they do that prevented --**

17 MR. GILBERT: Let him finish his
18 answer.

19 A. It was a combination between Tara Bruce, Matt
20 Frame, John Beverlin and Tom Kekela.

21 BY MR. McLANDRICH:

22 **Q. And what did they do that prevented you from**
23 **having a clean building?**

24 A. Again, I wasn't supported as a head custodian.
25 I was just a body. I had no power. Everything I did --

1 as a matter of fact, when I finally figured out
2 something because I had to change people's schedules,
3 trying to do everything to get this building to work, I
4 took numerous pictures, e-mailed plenty of people and
5 when I finally got this thing to work and put Thomas
6 Hill in a situation where he wasn't hiding women in
7 bathrooms and talking too much, after I got the
8 situation corrected, the next day John Beverlin come out
9 to the building and said I don't want it done like that.
10 I also shared with Bruce, if you're the building manager
11 why is Mr. Beverlin coming out here now saying that
12 after something that worked, a work schedules that I
13 worked, why is he coming out to the building saying he
14 don't want it done like that. I thought you were the
15 building manager.

16 **Q. And that had to do with Thomas Hill going**
17 **upstairs to help Ms. McNary with the second floor as**
18 **opposed to staying on the first floor, right?**

19 A. I don't think so. I think this had something to
20 do with me -- I don't know if that was the situation,
21 but it has something --

22 **Q. That's what the recording I listened to --**

23 MR. GILBERT: Objection. Let him
24 finish his answer.

25 A. I don't know. I'd have to listen to that

1 recording, but just because something is recorded and
2 something sounds familiar in my answer doesn't mean it's
3 the same situation. What I'm trying to explain to you
4 is if it's in the recording you can reference that, but
5 I freed Donnelle McNary up for two hours so she could go
6 around the building and help these people out, check
7 their run because they talk about responsibility time,
8 but Ms. McNary just because she was paid responsibility
9 time, she struggles getting her run done. So I freed
10 her up to make sure that everybody was doing their job,
11 and that night was a good night. The very next day
12 Mr. Beverlin came and told us we couldn't do it like
13 that.

14 BY MS. McLANDRICH:

15 **Q. And when he tells you that he doesn't want it**
16 **done like that, assuming that's what he said, what is**
17 **that evidence of?**

18 A. That they didn't want the building clean.
19 That's another point. I got to a point where I could
20 tell Ms. Bruce didn't want the building clean,
21 management didn't want the building clean, because as
22 long as the building is not clean, then all that falls
23 on me, which soon gets me out of the building, demoted
24 or fired. Nobody wanted that building clean except for
25 me.

1 **Q. All right. And so back to my question, which**
2 **was the only thing that prevented the building from**
3 **being clean is the fact that the co-workers weren't**
4 **helping you enough, right, because you couldn't do it**
5 **all by yourself?**

6 MR. GILBERT: Objection.

7 A. I apologize, but I thought I just answered that
8 when I said that was Matt Frame and Tara Bruce also.

9 BY MR. McLANDRICH:

10 **Q. But they're not going to come out and clean the**
11 **building?**

12 MR. GILBERT: Objection. Argumentive.

13 A. But they prevented it from being cleaned. When
14 I would leave at night Tara Bruce was giving the pool
15 workers other assignments just like they did with Trevor
16 Schrom. She was telling my pool workers what to do
17 while I was gone. I left at three.

18 BY MR. McLANDRICH:

19 **Q. But in terms of the work that you actually**
20 **performed you were able to do all of your work that you**
21 **were physically supposed to do, right?**

22 A. And you're talking about me now from seven to
23 three.

24 **Q. I'm talking about you from seven to three.**

25 A. No. I couldn't complete -- there were some days

1 that I couldn't complete my work.

2 **Q. What stopped you from being able to do that?**

3 A. Okay. I didn't have an assistant. I'd come in
4 in the morning -- okay. For example, let me give you
5 one day. For example, we would have Project Ujima come
6 up to the building and when they come up to the building
7 they need the cafeteria, all the tables moved out to the
8 side, and maybe about 30 to 40 tables in the center of
9 the cafeteria floor. When I was an assistant that's
10 what I did. Now that I was a head custodian, that's
11 what I did. So I would set that up and when I would go
12 home, Project Ujima would be there sometimes past 8:30.
13 Now I have no pool workers in the building. They're
14 still using the bathrooms, the cafeterias is not put
15 back together. So when I come back in in the morning
16 that's not on my schedule to put the cafeteria back
17 together, so that adds to me starting off being behind.

18 So now I have to put the cafeteria together.
19 Now I have six or seven rooms that haven't been touched.
20 Now I have to go and clean these rooms, empty trash
21 cans, and clean bathrooms that should have been done the
22 night before. I still have to pick up paper outside,
23 still shovelling duck poop off the playground area and
24 the basketball area and then I could try to come in and
25 start my job. When I came in to start my job, Ms. Bruce

1 was always having anywhere from 30 to 45 minute
2 conversations with me or she's calling me or telling me
3 to do something, trying to get the music room taken care
4 of. Something that I could have delegated that
5 responsibility to a pool workers since the permit wasn't
6 until the next day. Ms. Bruce, let me let the pool
7 workers do this. She told me, no, I want it done before
8 you leave. If I do this and fix this music room up, I'm
9 not going to be able to complete the cafeteria seeing
10 that nobody wants me to work overtime because I use to
11 do work a lot of free overtime in my building. The
12 minute I can't get my cafeteria done Bruce gets on the
13 phone after all that and the next thing I know Matt
14 Frame is out at the building. That was just one day.
15 Most of the days I had to come in and clean rooms.

16 **Q. The reason that you had to clean rooms is**
17 **because one of the other custodians, whether it's a pool**
18 **worker, assistant or eight-hour worker, they were**
19 **supposed to clean those rooms already?**

20 A. Yes. They're supposed to do that work at night.

21 **Q. All right. But in terms of you being able to**
22 **physically perform the tasks that were on your schedule**
23 **you were able to do those?**

24 MR. GILBERT: Objection.

25 BY MR. McLANDRICH:

1 **Q. You were physical ability to do them?**

2 MR. GILBERT: Objection.

3 A. I thought I just answered that. I don't
4 understand what you're asking me.

5 BY MR. McLANDRICH:

6 **Q. Let me try to clarify it. There's a difference**
7 **between having enough time to do something and being**
8 **physically able to do it. Do you understand the**
9 **difference?**

10 A. Yes. Yes.

11 **Q. All right. So you could sweep and mop the**
12 **cafeteria, correct?**

13 A. Yes.

14 **Q. And you could turn on the lights and make sure**
15 **that boiler is working, right?**

16 A. Yes.

17 **Q. And you could go outside and you could pick up**
18 **paper, right?**

19 A. Right.

20 **Q. And you could ride the lawnmower if you had to,**
21 **right?**

22 A. Yes.

23 **Q. And you could shovel the duck poop if the duck**
24 **poop needed to be shoveled or the snow off the walk if**
25 **that needed to be done, correct?**

1 A. Yes.

2 Q. So when you would come in in the morning you
3 would open the main office door and the copy room door
4 and open the doors to the kitchen, correct?

5 A. Yes. Depending on which way I came into the
6 building.

7 Q. And those are things that you were capable of
8 doing?

9 A. Yes.

10 Q. And then you would double bag the trash cans for
11 breakfast and take some cans upstairs to the second
12 floor, correct?

13 A. On a normal day. Yes.

14 Q. And you were physically able to do that,
15 correct?

16 A. Yes. On a normal day.

17 Q. Right. And when you're saying, "on a normal
18 day," that means if you were pulled off onto something
19 else or somebody else hadn't taken care of something
20 else you might go do that instead?

21 A. No. A normal day would be a head custodian in
22 that building, an assistant custodian in that building
23 and an eight-hour person in that building.

24 Q. All right. And than you would go to the second
25 floor, open up the copy room, right, on a normal day?

1 A. I understand you're probably reading from my
2 open procedure.

3 **Q. Yeah.**

4 A. Okay. If you're asking if things goes that way
5 just because they're on paper, no. Things don't happen
6 that way.

7 **Q. That's not what I'm asking at all. I'm just ask**
8 **whether you're --**

9 MR. GILBERT: Objection.

10 MR. McLANDRICH: I'm answering his
11 question.

12 BY MR. McLANDRICH:

13 **Q. I'm asking whether you were able to perform**
14 **these task if you had the opportunity to perform them.**

15 MR. GILBERT: At what point in time,
16 counsel?

17 A. Oh, yeah.

18 MR. McLANDRICH: When he left the
19 building in August.

20 MR. GILBERT: Now we have the
21 timeframe of August of 2018, correct?

22 BY MR. McLANDRICH:

23 **Q. Or any other time. Was there a time where you**
24 **were physically unable to mop a floor, you couldn't move**
25 **the mop with your arms?**

1 A. No.

2 Q. Was there a time that you physically couldn't
3 use the broom?

4 A. No.

5 Q. Was there a time that you couldn't physically
6 put a bag into a trash can and move the trash can?

7 A. No.

8 Q. Was there a time that you couldn't physically
9 operate the boiler?

10 A. No.

11 Q. Was there a time where you physically couldn't
12 walk up and down the steps in the building?

13 A. No.

14 Q. Was there a time where you couldn't empty the
15 trash cans after breakfast?

16 A. No.

17 Q. Was there a time where you couldn't open and
18 close the doors to the various offices?

19 MR. GILBERT: Let him answer your
20 question.

21 MR. McLANDRICH: I did. He said no.

22 A. Ask the question again.

23 MR. GILBERT: You cut him off.

24 MR. McLANDRICH: It certainly not was
25 not my intention.

1 BY MR. McLANDRICH:

2 Q. Was there ever a time that you couldn't empty a
3 trash can?

4 A. Not physically, no.

5 Q. All right. Was there ever a time that you
6 couldn't physically operate the boiler?

7 A. No. Not physically.

8 Q. Was there ever a time where you couldn't move
9 the tables around in the cafeteria?

10 A. No. Not physically.

11 Q. And when you say "no, not physically," are
12 suggesting there was a time that you didn't have enough
13 time to do those things?

14 A. Exactly.

15 Q. Okay. And I understood that. Thank you. And
16 there was never a time that you couldn't physically open
17 and close the doors to the various rooms and unlock the
18 building and lock the building back up if you needed to?

19 A. No.

20 Q. Was there anything that physically prevented you
21 from being able to observe the quantity and quality of
22 the work performed by the other custodians?

23 A. No.

24 Q. And as head custodian you were sort of captain
25 of the ship of the custodial services in that building,

1 correct?

2 A. Yes. If you'd like to put that it day way.

3 Q. And it was your duty to supervisor the other
4 custodians and ensure that the building was clean,
5 correct?

6 A. Along with an assistant custodian if I had one.
7 If I had an assistant, that would have been different.

8 Q. And an assistant custodian would have made the
9 job easier to perform?

10 A. Yes. If I had somebody to watch the people to
11 make sure that the work was being done, yes.

12 MR. McLANDRICH: All right. Let's
13 take a ten minute break.

14 MR. GILBERT: Counsel, do you know how
15 many longer you'll be?

16 MR. McLANDRICH: I'm close to done.

17 - - - -

18 (Thereupon, an off-the-record discussion was held.)

19 - - - -

20 BY MR. McLANDRICH:

21 Q. Mr. Garnett, which of the pool workers that you
22 had -- you weren't really there in '18 at all, were you?

23 A. No.

24 Q. So when you have left in '18 you hadn't been in
25 the building for at least those eight months of '18,

1 **correct?**

2 A. Yes.

3 **Q. Yes, that's correct?**

4 A. Yes. I do believe that's correct.

5 **Q. So then let's just talk about 2017. Which pool**
6 **workers did you have during 2017 that were good?**

7 A. '17, Mikal. I don't know his last name. I
8 think Mikal is his first name.

9 **Q. That's M-I-K-A-L?**

10 A. Yes.

11 **Q. Okay.**

12 A. If you have a list of those that worked there I
13 could tell you who was good or bad. Mikal and Thomas
14 Hill is pretty much all I could remember.

15 **Q. Was Thomas Hill good or bad?**

16 A. Thomas Hill was good in the beginning. I
17 believe Thomas Hill came and I had an assistant at the
18 time. I believe Thomas Hill came in January and things
19 in the beginning seemed to be working out.

20 **Q. How about Ms. McNary, I know she wasn't a pool**
21 **worker, but was she a good worker?**

22 A. As far as the workload she had, yes. She was a
23 good worker.

24 **Q. And she was an eight-hour worker, right?**

25 A. Eight-hour custodial, yes.

1 **Q. How about Trevor Schrom, was he a decent worker?**

2 A. Actually, no.

3 **Q. Who else was a bad pool worker?**

4 A. Like I said, Allen Wallace. He wasn't trained.
5 I forgot about him.

6 **Q. And was he capable of doing the work just not**
7 **well trained?**

8 A. I don't know if he was capable of doing the work
9 or not. Like I said, we get some of these pool workers
10 who have disabilities and sometimes you could show them
11 something and they'll forget in two days.

12 **Q. And Mr. Ache we already decided was a good pool**
13 **worker, right?**

14 A. Yes. He did his job.

15 **Q. And do you recall what time period he was with**
16 **you?**

17 A. I think it was at the end of the year possibly
18 the last month in May.

19 **Q. Of '17?**

20 A. Possibly. From the best of my memory I think it
21 was at the end of May.

22 **Q. May of '17?**

23 A. Yes.

24 **Q. And then he stayed how long, do you know?**

25 A. After that month and the school shut down I

1 believe they took him out of the building.

2 **Q. Okay.**

3 MR. GILBERT: Counsel, you made a
4 statement that I'm not sure is accurate. I want to
5 clear it up with you. Mr. Garnett was not in the
6 building in 2018. That could be right.

7 MR. McLANDRICH: It wasn't a
8 statement. It was a question.

9 A. Yeah. I don't believe I was. I don't know.

10 MR. GILBERT: Okay.

11 BY MR. McLANDRICH:

12 **Q. Was there a pool worker name David?**

13 A. Oh, yes. David Jones.

14 **Q. David Jones, was he good or bad?**

15 A. David Jones was a good pool worker.

16 **Q. When was he with you?**

17 A. I can't remember. I know I requested for him to
18 come back to replace Thomas Hill. I don't know if it
19 was -- let me take that back. I did request for him to
20 come to my building and I believe that was in 2017.

21 **Q. Who was the guy that you had the shouting match**
22 **with, was that Thomas Hill?**

23 A. I never had a shouting match with anybody.

24 **Q. Who was the guy that shouted at you?**

25 A. Thomas Hill.

1 **Q. So that's the same guy?**

2 A. Yes.

3 **Q. Okay. And then there was a guy that was**
4 **referred to somewhere as younger Thomas or something.**
5 **Who was that guy?**

6 A. We called him Tea Time. He was a student. I
7 don't know his last name.

8 **Q. So he was just a student helper?**

9 A. Yes.

10 **Q. No other pool workers that you worked with that**
11 **you can remember?**

12 A. Are you talking about during that time?

13 **Q. Yes.**

14 A. Sam Page.

15 **Q. And how was he, good or bad?**

16 A. Bad.

17 **Q. And was he just lazy and wouldn't do his work**
18 **kind of thing?**

19 A. Yes. I also took pictures of his work and I had
20 went in on a Saturday and found his run was about five
21 or six rooms up on the second floor that weren't
22 complete. It was feces across from the pre-kids room on
23 a Saturday. I had called and complained about that.

24 **Q. So in terms of damages in this case,**
25 **Mr. Garnett, do you know what you're claiming in terms**

1 **of damages?**

2 A. What do you mean? I don't know what you mean.

3 **Q. Yeah. So I know like a damage would be you**
4 **think that you should get paid for your drill and**
5 **battery charger and now these items of clothing that you**
6 **believe were in the lockers, right? So that would be a**
7 **damage.**

8 A. Okay.

9 **Q. So we've got those items, if you will.**

10 A. Yes.

11 **Q. And then it sounds like you think that you**
12 **should still be working at APS?**

13 A. Is that a question?

14 **Q. Is that one of the things that you're claiming**
15 **that you should still be there?**

16 A. I don't know how to answer that. I really don't
17 know how to answer that.

18 **Q. Okay. Well, are you --**

19 A. I do know how to answer that now. I feel -- let
20 me go back. I'm not sure how to answer that question.

21 **Q. Okay.**

22 A. Am I capable to work at APS?

23 **Q. We can start with that.**

24 A. Yes.

25 **Q. Have you had any sort of occupational evaluation**

1 **by any of your doctors to see what you're physically**
2 **able to do?**

3 A. Well, I had spoke with my dialysis doctor and he
4 had put forth some reasonable accommodations.

5 **Q. I'm not sure what that means.**

6 A. He was saying you might need some extra breaks,
7 a computer screen, something reasonable. Not turning
8 the Board of Education upsidedown but just simple
9 things, reasonable. I might need a couple days off here
10 and there for certain things.

11 **Q. Okay. Well, right now it sounds like from what**
12 **you said earlier you need at least three-and-a-half**
13 **hours three times a week off to go to dialysis, right?**

14 A. Yes.

15 **Q. Well, you need that.**

16 A. Well, actually the hours of dialysis, you could
17 in as early at 5:30 in the morning or as late as 4:00.

18 **Q. Okay. So maybe you could go after the workday?**

19 A. Exactly.

20 **Q. Are you asking the court to give you your job**
21 **back?**

22 A. I'm just here doing a deposition.

23 **Q. I understand, but I'm trying to understand in**
24 **the deposition what relief you would have the court**
25 **grant you if they gave you everything that you wanted.**

1 **Would that include going back to work at APS?**

2 A. I never thought about it. I don't know how to
3 answer that question.

4 **Q. Okay. So if you don't know, you don't know and**
5 **that's fine. You don't know if whether part of what**
6 **you're asking the court to reward you is your job back?**

7 A. Well, if that's in there. If it's in there I'm
8 fine with it. If that's part of it. Are you talking
9 real or you just throwing that out there just to see
10 what I say?

11 **Q. Well --**

12 A. I don't mean to be asking you questions, I just
13 was never expecting that question.

14 **Q. Sure. And the reality of this is, this is your**
15 **lawsuit. So what you think you're entitled to is what**
16 **you think you're entitled to. I'm just trying to figure**
17 **out what you think it is. Mr. Gilbert might think it's**
18 **one thing and I'm just asking Mark Garnett, what is it**
19 **that you want out of this lawsuit?**

20 A. I can't answer that. That would have to be
21 something I guess that I would have to think about.
22 That would be something that I would have to think
23 about. If you ask me that question right out to the
24 clear blue without any thought amongst other people. I
25 don't want to just throw an answer out there to you.

1 MR. GILBERT: You've answered the
2 question.

3 BY MR. McLANDRICH:

4 **Q. So, we don't know about return to work. We know**
5 **that you want to be paid for your personal items that**
6 **you believe were stolen from you. I get that. What**
7 **else is it that you think you ought to be compensated**
8 **for because of what people have done to you? What do**
9 **you think you're entitled to?**

10 MR. GILBERT: I'm going to object,
11 counsel.

12 MR. McLANDRICH: I understand.

13 A. Are you talking about money?

14 BY MR. McLANDRICH:

15 **Q. Yeah. What do you think that you should be**
16 **given money for?**

17 A. Money has never been on my mind. Change. I
18 don't want people to have to go to work and be chased
19 down the hallway with hangman nooses and be conspired
20 against and treated badly. That's my stand. What I
21 want is for things to change and for a light to be
22 shined on things where it makes things better for
23 everybody. I've never thought about money ever.

24 **Q. Let's just take those statements at face value,**
25 **if you will. So, no one has displayed hangman's noose**

1 **since 2002, so that doesn't seem to be something that**
2 **needs to be changed, am I right?**

3 A. Let me explain that. I may not have physically
4 seen a noose since '02, but I see it in my nightmares.
5 I still have nightmares. What I'm saying is that I
6 still have nightmares. When you're saying I haven't
7 seen them, I have seen them. My thing is hopefully I
8 could make a difference to even where just one person
9 doesn't have to see hangman nooses in their dreams.

10 Q. And I get that and my heart goes out to you that
11 you still see them and I don't want you to see them and
12 I don't want you to suffer that. But with that said, in
13 terms of effecting change, I can't stop you from seeing
14 them in your dreams. If I could, believe me I would do
15 that. But what I'm trying to understand is, you know,
16 this is a civil lawsuit. Civil lawsuits are about money
17 and, you know, no one wants you to continue to suffer
18 that but now here we are in a civil lawsuit which is a
19 case to recover money. So you know, are you asking the
20 court or asking a jury to pay you because you have bad
21 dreams still?

22 MR. GILBERT: Objection, counsel. You
23 have the complaint before you.

24 MR. McLANDRICH: I know I have the
25 complaint. I'm taking the witness' deposition.

1 A. If I could take all of that stuff away and still
2 be making a good salary, because I made a great salary
3 while I was working for APS, but if you're asking about
4 money, there's no amount of money that can fix me.
5 There's no amount of money that's going to put a smile
6 on my face. If you're asking me about money there's no
7 limit to anything that's going to make me happy. Again,
8 I'd like to say it's not about money but there's no
9 amount of money that can fix me.

10 BY MR. McLANDRICH:

11 Q. And I get that. So now with that said, this is
12 still a civil lawsuit. So what are you asking the court
13 to pay you for? Is it for the bad dreams? Is it for
14 what happened in 2002, or is it because you had the
15 lousy pool workers? What are you asking to be paid for?

16 MR. GILBERT: Objection.

17 A. I wish I knew how to answer your question. I've
18 never thought about money.

19 BY MR. McLANDRICH:

20 Q. I'm not asking you for a specific amount of
21 money. I'm looking for items or categories where you
22 think that you've been injured that somebody would
23 conceivably pay you for. If you were saying they broke
24 my leg, I could understand that. Now I'm trying to
25 understand what it is that at the end of the day you're

1 **lawyer is going to stand up and say pay this man for it.**
2 **I don't get to ask him. I can ask him any time. I'm**
3 **asking you.**

4 MR. GILBERT: Objection. I think he's
5 answered the question.

6 MR. McLANDRICH: I appreciate your
7 objection.

8 MR. GILBERT: Go ahead.

9 A. Okay. The only thing -- I don't know what it's
10 worth. I don't know what six guys coming up to you in a
11 classroom saying we about to have a lynching and they're
12 about to put a rope around your neck, then you have a
13 confrontation with them and they look at you and you
14 take off down the hallway and they're following you down
15 the hallway and you end up in a classroom, hiding out in
16 a classroom. I don't know what that's worth. I don't
17 know what it's worth to be transferred to a building
18 where there's still ties to this building. I don't know
19 what it's worth for me to see this guy's face at Crouse
20 again a couple of times. I don't know what it's worth
21 to go to work and be paranoid. How do you put a price
22 on that? Have I answered your question again? If you
23 want another answer from me I don't have anymore.

24 MR. GILBERT: You've answered the
25 question. Thank you.

1 BY MR. McLANDRICH:

2 Q. Do you have any physical injuries that you're
3 looking to recover from?

4 A. You're asking about the hit up side the head?

5 Q. I'm asking if you in your own mind you believe
6 that you have physical injuries that you're looking to
7 get paid for in this litigation.

8 A. I'm still suffering from the punch in the back
9 of the head. I haven't thought about money or gaining
10 anything. I can only tell you -- I haven't thought
11 about these things.

12 Q. I get that, but no one at APS punched you in the
13 back of the head right, that was a student that slapped
14 you?

15 A. Yes.

16 Q. This evaluation form that you were talking about
17 and the requirement for some sort of interim review, do
18 you recall that discussion?

19 A. You have to tell me --

20 Q. Let me restate it. You were saying something
21 earlier about before you could get downgraded they had
22 to give you some sort of written warning or statement
23 that you needed to improve, that sort of thing. Is that
24 what you said?

25 A. I believe that would have been fair.

1 **Q. Okay. But it's not a requirement? It would**
2 **have been fair, but it's not a requirement?**

3 MR. GILBERT: Objection.

4 A. It's how I operated. It's how I did my
5 evaluations.

6 MR. McLANDRICH: Okay. Mr. Garnett, I
7 think that's all I have for you. I appreciate your
8 time.

9 MR. GILBERT: I e-mailed you the sheet
10 that he referred to. We don't object to it. It's just
11 things that he had written down.

12 MR. McLANDRICH: Let's address that
13 very briefly here. We don't need to mark that I don't
14 think and I don't know how we could as we sit here.

15 BY MR. McLANDRICH:

16 **Q. Mr. Garnett, it says on this handwritten sheet**
17 **here, and you can look at your copy there --**

18 MR. GILBERT: John, if you want to
19 mark it as a joint Exhibit, but I think for the sake of
20 the record we ought to at least mark it.

21 MR. McLANDRICH: We can forward it to
22 our friends at Tackla.

23 MR. GILBERT: You could mark a joint
24 Exhibit, but I just want to make sure that you have an
25 opportunity to exam it.

1 MR. McLANDRICH: I appreciate that. I
2 sent it to Tackla, and hopefully they can make it an
3 Exhibit.

4 - - - -

5 (Thereupon, Defendants' Exhibit L was marked for
6 identification.)

7 - - - -

8 BY MR. McLANDRICH:

9 Q. If I come back to the video I can't see the
10 document. Is that all right with everyone?

11 A. Okay.

12 Q. We're going to mark this as Defendant's Exhibit
13 L. So, Mr. Garnett, looking at Defendant's Exhibit L it
14 says at the top "Matt Frame," right?

15 A. Yes.

16 Q. I'm sorry. Thomas Frame. These notes, do they
17 just relate to Mr. Frame?

18 A. Yes.

19 Q. And then --

20 A. Well, I don't know. It might say something
21 about Tara Bruce on there too.

22 Q. You have it in front of you?

23 A. I never read it. When I picked that paper up I
24 never used it, so I'm reading it now.

25 Q. Did you write this paper?

1 A. I had my wife write it for me.

2 **Q. And she wrote it based on what?**

3 A. What I was saying.

4 **Q. So you told her what to write and she wrote it**
5 **down?**

6 A. Yes.

7 **Q. All right. Well, go ahead and read it and then**
8 **let's discuss it.**

9 A. Okay. Thomas Frame, retaliation, lawn pool
10 workers to be disrespectful, lack of support, teaming up
11 with principal, patting pool worker on shoulders,
12 telling them they're doing a good job. And then I have
13 why, because I sued the board in '02. Friends in
14 management, that might have been for something totally
15 different.

16 **Q. I was kind of wondering about that. What does**
17 **that friends in management mean, do you have any idea?**

18 A. That might have been not even part of this.

19 MR. GILBERT: That deals with another
20 subject matter?

21 A. Yeah. Totally different.

22 BY MR. McLANDRICH:

23 **Q. Does that deal with this lawsuit?**

24 A. No. When I saw that I didn't even know what
25 that was.

1 Q. And the link between those acts of retaliation
2 and the events in 2002, is there anything to add to that
3 beyond what we've already talked about?

4 A. Say that again.

5 Q. Sure. The link between the events in 2002, the
6 lawsuit against the board in 2002 and those acts of
7 retaliation, the connection between those two things, in
8 other words, the facts that you believe those acts of
9 retaliation are because you sued the board, we talked
10 about that earlier and I wanted to give you the
11 opportunity to add any other basis that you believe he
12 allowed the pool workers to be disrespectful, or gave
13 you a lack of support or teamed up with the principal or
14 patted the pool workers on the shoulders and told them
15 they were doing a good job. I want you to tell me if
16 there's any other reasons to believe that those events
17 or action are related to the 2002 lawsuit and events
18 beyond what you already told me?

19 A. If there's any other events?

20 Q. In other words, any other reasons to believe
21 those things are connected.

22 MR. GILBERT: We've gone through your
23 testimony. Do you have any else to add?

24 A. Not off the top of my head, no.

25 MR. GILBERT: Thank you.

1 MR. McLANDRICH: All right. That's
2 all I have for you, Mr. Garnett.

3 MR. GILBERT: Okay. We'll read.

4 MR. McLANDRICH: Megan, go ahead and
5 write it up.

STATE OF OHIO,)
)
CUYAHOGA COUNTY.)

I do further certify that I am not a relative, employee of or attorney for any of the parties in the above-captioned action; I am not a relative or employee of an attorney of any of the parties in the above-captioned action; I am not financially interested in the action; and I am not, nor is the court reporting

1 firm with which I am affiliated, under a contract as
2 defined in Civil Rule 28(D).

3
4 IN WITNESS HEREOF, I have hereunto set my hand and
5 affixed my seal of office at Cleveland, Ohio on
6 September 17th, 2020.

7
8
9
10
11 _____
12 Megan A. Medved, a Notary Public
13 in and for the State of Ohio.

14 My Commission expires 9/17/23
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Errata Sheet

Page 22, Line 23 – A. **"Yes, when she gave me the rose, she hugged me"**

Page 26, Line 24 – A. Revise to say **"I do have more recordings I haven't been able to locate with Mr. Ake lying about Ms. McNary, other conversations with Ms. Bruce (her praising my work and about her last custodian and asking me if the other head custodian I worked with was white, trying to get Mikal out of the building because she knew I wanted to keep him there), me talking with Thomas Hill about teachers complaining about him, me calling downtown to Mr. Beverlin and him not taking my calls and Mr. Kekela telling my assistant custodian to do a shittier job because Crouse kids were a bunch of animals....from what I can remember right now."**

Page 33, Line 4 – A. **"I heard they didn't get their CDL...."**

Page 39, Line 9 – **"I was given a muddy, zero turn mower that needed work, instead of a new one"**

Page 49, Line 14 – **"I was not on leave when I received that downgraded evaluation in June of 2017 when Matt Frame told me that I could not bid on any buildings."**

Page 52, Line 24 - **"...maybe I brought it up"—Should say, "I don't recall who brought it up"**

Page 69, Line 8 – **"She said I move slow in everything I do..."**

Page 112, Line 19 – Add **" I don't understand the interpretation of these paragraph sections..."**

Page 113, Line 19 - Add **" I don't understand the interpretation of these paragraph sections..."**

Page 117, Line 17 – Should say **"when I send my stuff down to Tom Kekela..."**

Page 125, Line 5 – add, ... **"That's when I thought someone told that student to hit me.."**

Page 136, Line 16 – Should say **Thomas Hill not Thomas Frame**


Page 160, Line 3 - add **"I was doing my job from seven to three"**

Page 169, Lines 1 through 25 – **I didn't fully understand the questions being asked.**

Page 170, Lines 2 through 23 – **I didn't fully understand the questions being asked.**

Page 181, Line 17 –**"I want to be compensated for pain and suffering due to being forced out of work through discrimination based on my age and retaliation. Also for being denied opportunity to further my employment with APS, harassment and pay that I have missed by not being employed up to my retirement age and attorney fees"**

Mark Garnett

 10-19-2020